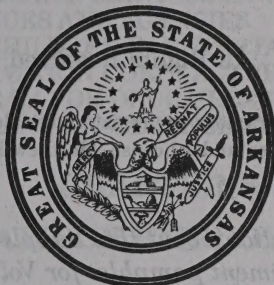


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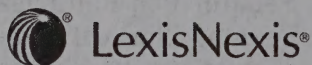
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TITLE 11

LABOR AND INDUSTRIAL RELATIONS

(CHAPTERS 1-7 IN VOLUME 7A)

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11-8-106. Contract exemptions void —
Setoff for insurance contri-
butions.

11-8-106. Contract exemptions void — Setoff for insurance contributions.

(a) Any contract, rule, or device whatsoever, the purpose or intent of which shall be to enable any corporation to exempt itself from any liability created by §§ 11-8-101 — 11-8-108, shall to that extent be void.

(b) However, in any action brought against any corporation under or by virtue of any of the provisions of §§ 11-8-101 — 11-8-108, the corporation may set off therein any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which the action was brought.

History. Acts 1913, No. 175, § 4; C. & M. Dig., § 7147; Pope's Dig., § 9133; A.S.A. 1947, § 81-1204; Acts 2019, No. 315, § 774.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a).

CHAPTER 9

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Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 353, § 4, provided: "Retraction. Sections 2 and 3 of this act apply to workers' compensation claims accruing on or filed on and after March 11, 2020."

Acts 2021, No. 353, § 5, provided: "Temporary legislation. This act expires on May 1, 2023, unless extended by the General Assembly."

Acts 2021, No. 353, § 6: Mar. 15, 2021. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that the risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations creates uncertainty for employees and employers in Arkansas, causing businesses to remain closed and unemployment for Arkansans to increase causing financial concerns for both employees and employers; that protecting employees and employers in Arkansas from the threat of coronavirus 2019 (COVID-19) or of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and from the impact on employment can encourage businesses to stay open, provide protection for employees returning to work, and thereby reduce unemployment for Arkansans; and that this act is immediately necessary because employees and employers need protection from the threat of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and from the impact felt on businesses in Arkansas in order to remain open, return to work, and be able to conduct business in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither

approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

11-9-101. Title — Purpose.

CASE NOTES

Cited: Ark. Game & Fish Comm'n v. Gerard, 2018 Ark. 97, 541 S.W.3d 422 (2018).

11-9-102. Definitions.

As used in this chapter:

(1) "Carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state. Whenever required by the context, the term "carrier" shall be deemed to include duly qualified self-insureds or self-insured groups;

(2) "Child" means a natural child, a posthumous child, a child legally adopted prior to injury of the employee, a stepchild, an acknowledged illegitimate child of the deceased or of the spouse of the deceased, and a foster child;

(3) "Commission" means the Workers' Compensation Commission;

(4)(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition;

(b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence; or

(c) Hearing loss which is not caused by a specific incident or which is not identifiable by time and place of occurrence;

(iii) Mental illness as set out in § 11-9-113;

(iv) Heart or cardiovascular injury, accident, or disease as set out in § 11-9-114;

(v) A hernia as set out in § 11-9-523; or

(vi) An adverse reaction experienced by any employee of the Department of Health or any employee of a hospital licensed by the

Department of Health related to vaccination with Vaccinia vaccines for smallpox, including the Dryvax vaccine, regardless of whether the adverse reaction is the result of voluntary action by the injured employee.

(B) "Compensable injury" does not include:

(i) Injury to any active participant in assaults or combats which, although they may occur in the workplace, are the result of nonemployment-related hostility or animus of one, both, or all of the combatants and which assault or combat amounts to a deviation from customary duties; furthermore, except for innocent victims, injuries caused by horseplay shall not be considered to be compensable injuries;

(ii) Injury incurred while engaging in or performing or as the result of engaging in or performing any recreational or social activities for the employee's personal pleasure;

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated; or

(iv)(a) Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(b) The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(c) Every employee is deemed by his or her performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.

(d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or accident.

(C) The definition of "compensable injury" as set forth in this subdivision (4) shall not be deemed to limit or abrogate the right to recover for mental injuries as set forth in § 11-9-113 or occupational diseases as set forth in § 11-9-601 et seq.

(D) A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section.

(E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(i) For injuries falling within the definition of compensable injury under subdivision (4)(A)(i) of this section, the burden of proof shall be a preponderance of the evidence; or

(ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

(F) BENEFITS.

(i) When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability as provided by this chapter.

(ii)(a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.

(b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

(iii) Under this subdivision (4)(F), benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

(iv) Nothing in this section shall limit the payment of rehabilitation benefits or benefits for disfigurement as set forth in this chapter;

(5) "Compensation" means the money allowance payable to the employee or to his or her dependents and includes the allowances provided for in § 11-9-509 and funeral expenses;

(6) "Death" means only death resulting from compensable injury as defined in subdivision (4) of this section;

(7) "Department" means the State Insurance Department;

(8) "Disability" means incapacity because of compensable injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the compensable injury;

(9)(A) "Employee" means an individual, including a minor, whether lawfully or unlawfully employed in the service of an employer under a contract of hire or apprenticeship, written or oral, expressed or implied, and the individual's employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq.

(B) The term "employee" shall not include:

(i) An individual who is both a licensee as defined in § 17-42-103 and a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder;

(ii) An individual whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer; or

(iii) An individual who is required to perform work for a municipality, county, state, or the United States Government upon having been convicted of a criminal offense or while incarcerated.

(C) Any individual holding from the commission a current certification of noncoverage under this chapter shall be conclusively presumed not to be an employee for purposes of this chapter or otherwise during the term of his or her certification or any renewals thereof or until he or she elects otherwise, whichever time period is shorter.

(D) Any reference to an employee who has been injured, when that employee is dead, shall also include his or her legal representative, dependents, and other persons to whom compensation may be payable.

(E) "Employee" shall not include a direct seller as defined in the Internal Revenue Code of 1986, 26 U.S.C. § 3508(b)(2), as it existed on January 1, 2021;

(10) "Employer" means any individual, partnership, limited liability company, association, or corporation carrying on any employment, the receiver or trustee of the same, or the legal representative of a deceased employer;

(11) "Employment" means:

(A) Every employment in the state in which three (3) or more employees are regularly employed by the same employer in the course of business except:

(i) An employee employed as a domestic servant in or about a private home;

(ii) An employee employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home or residence of the person employing the employee;

(iii) Agricultural farm labor;

(iv) The State of Arkansas and each of the political subdivisions thereof except as provided by §§ 6-17-1401 — 6-17-1405, 14-26-101 — 14-26-104, 14-60-101 — 14-60-104, 19-10-101 — 19-10-103, 19-10-202 — 19-10-210, 19-10-401 — 19-10-406, and 21-5-601 — 21-5-610;

(v) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States;

(vi) A person performing services for any nonprofit religious, charitable, or relief organization;

(vii) Any person engaged in the vending, selling, offering for sale, or delivery directly to the general public of any newspapers, magazines, or periodicals or any person acting as sales agent or distributor as an independent contractor of or for any newspaper, magazine, or periodical; and

(viii) Any individual who is both a licensee as defined in § 17-42-103 and a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder;

(B) Every employment in which two (2) or more employees are employed by any person engaged in building or building repair work;

(C) Every employment in which one (1) or more employees are employed by a contractor who subcontracts any part of his or her contract; and

(D) Every employment in which one (1) or more employees are employed by a subcontractor;

(12) "Healing period" means that period for healing of an injury resulting from an accident;

(13) "Insurance Commissioner" means the Insurance Commissioner of the State of Arkansas;

(14)(A) "Major cause" means more than fifty percent (50%) of the cause.

(B) A finding of major cause shall be established according to the preponderance of the evidence;

(15) "Medical services" means those services specified in § 11-9-508;

(16)(A)(i) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

(ii)(a) When determining physical or anatomical impairment, neither a physician, any other medical provider, an administrative law judge, the Workers' Compensation Commission, nor the courts may consider complaints of pain.

(b) For the purpose of making physical or anatomical impairment ratings to the spine, straight-leg-raising tests or range-of-motion tests shall not be considered objective findings.

(iii)(a) Objective evidence necessary to prove physical or anatomical impairment in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to, audiological tests that measure air and bone conduction thresholds and speech discrimination ability.

(b) Any difference in the baseline hearing levels must be confirmed with a subsequent test within the next four (4) weeks but not before five (5) days and being adjusted for presbycusis.

(B) Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty;

(17)(A) "State average weekly wage" means the state average weekly wage determined annually by the Division of Workforce Services in the preceding calendar year pursuant to § 11-10-502.

(B) If, for any reason, the determination is not available, the commission shall determine the wage annually after reasonable investigation and public hearing;

(18) "Time of accident" or "date of accident" means the time or date of the occurrence of the accidental incident from which compensable injury, disability, or death results;

(19) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer and includes the amount of tips required to be reported by the employer pursuant to

section 6053 of the Internal Revenue Code of 1954 and the regulations promulgated pursuant thereto or the amount of actual tips reported, whichever amount is greater; and

(20)(A) "Widow" shall include only the decedent's legal wife, living with or dependent for support upon him at the time of his death.

(B) "Widower" shall include only the decedent's legal husband, living with or dependent for support upon her at the time of her death.

History. Init. Meas. 1948, No. 4, § 2, Acts 1949, p. 1420; Acts 1975 (Extended Sess., 1976), No. 1227, § 2; 1979, No. 119, § 1; 1981, No. 290, § 1; 1983, No. 444, § 1; 1986 (2nd Ex. Sess.), No. 10, § 1; A.S.A. 1947, § 81-1302; reen. Acts 1987, No. 1015, § 2; Acts 1993, No. 796, § 2; 1995, No. 919, §§ 1, 2; 1997, No. 479, § 8; 1997, No. 832, § 1, 2; 1999, No. 20, § 1; 2001, No. 1757, §§ 1, 2; 2003, No. 1237, § 1; 2005, No. 1250, § 1; 2005, No. 1692, § 1; 2007, No. 546, § 2; 2019, No. 910,

§ 170; 2019, No. 1055, §§ 4, 5; 2021, No. 947, § 2.

Amendments. The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" in (17)(A).

The 2019 amendment by No. 1055 rewrote (9)(A); added (9)(B)(ii) and (9)(B)(iii) and added the (9)(B)(i) designation; and substituted "An individual" for "any individual" in (9)(B)(i).

The 2021 amendment added (9)(E).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Workers' Compensation Laws to Claim for Hearing Loss — Result-

ing from Long Term Noise Exposure. 99 A.L.R.6th 643 (2014).

CASE NOTES

ANALYSIS

Applicability.
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Medical Opinions.
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—Hearing Loss.
Performing Employment Services.
Substantial Evidence.
Temporary Total Disability.
Timeliness.
Wages.

Applicability.

Governing law when the Workers' Compensation Commission decided to apply subdivision (4)(A)(i) of this section to ap-

pellant's gradual-onset injury was that the section did not apply to gradual-onset injuries. The Commission's decision to apply subdivision (4)(A)(i) to time-bar appellant's claims was a mistake of law. *Es-trada v. AERT, Inc.*, 2014 Ark. App. 652, 449 S.W.3d 327 (2014).

Accidental Injury.

Workers' Compensation Commission did not err in awarding an employee temporary total-disability benefits because there was substantial evidence to support its finding that the employee's herniated disc was an accidental injury arising from his employment where the employee's testimony about what happened was corroborated by his supervisor and the documentary evidence in the record and there was no evidence of a non-work related injury or event that contradicted the employee's claim. *Pulaski County Special Sch. Dist. v. Laster*, 2015 Ark. App. 206, 465 S.W.3d 421 (2015).

Benefits.

—Major Cause.

Employer's acceptance of a thirteen-percent impairment rating for a workers' compensation claimant satisfied the major-cause requirement and made it unnecessary for the administrative law judge to make a separate, specific major-cause finding. *St. Edward Mercy Med. Ctr. v. Gilstrap*, 2014 Ark. App. 306 (2014).

Child.

In a workers' compensation case, a deceased employee's stepchildren were properly found to be dependent for purpose of receiving death benefits where the employee had been married to his current wife for two years, the stepchildren resided with them, and his earnings were used to support the stepchildren. *Death & Permanent Total Disability Trust Fund v. Myers*, 2014 Ark. App. 102 (2014).

Compensation.

One statute only provides the maximum amount of money an employer must pay as compensation for an employee's work-related death, but the statute is silent on whether a credit for good-faith, but ultimately mistaken, payments may be given; because the widow was not her husband's dependent, the money the employer paid her could not be counted as weekly benefits or compensation, and the

payments did not accrue as a credit against the employer's responsibility to the Fund. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Date or Time of Accident.

Workers' Compensation Commission found that appellant lacked credibility, which was based on her inconsistent reports about the injury, and although the inability to identify a certain date did not operate as a bar to appellant from obtaining compensation, it was within the province of the Commission to consider the date confusion a matter of credibility; the Commission questioned whether the slip and fall at work had taken place, and substantial evidence supported the finding. *Swink v. Rest. Mgmt.*, 2012 Ark. App. 490 (2012).

Employee.

—Undocumented Worker.

Workers' Compensation Commission properly determined that an undocumented alien was entitled to temporary total-disability benefits because she suffered a compensable injury when she tripped and fell while performing services for the employer, even if that injury was just an aggravation of a preexisting shoulder spur; claimant's legal status was irrelevant as to whether she could take advantage of the benefits afforded to her by Arkansas law as the statutory definition of employee expressly included any person, whether lawfully or unlawfully employed. *Packers Sanitation Servs. v. Quintanilla*, 2017 Ark. App. 213, 518 S.W.3d 701 (2017).

Employment.

Payroll sheets listed only the worker as an employee in 2011, and the company's owner testified that another individual was not an employee of the company; the Workers' Compensation Commission found the owner's testimony credible, and thus substantial evidence supported the Commission's finding that the company regularly employed only two employees, the worker and the owner, and thus the company did not qualify as an employer under the Workers' Compensation Law. *Sammons v. Williams*, 2015 Ark. App. 139 (2015).

—Performing Employment Services.

Workers' Compensation Commission's decision displayed a substantial basis for denying compensability because appellant was not performing employment services at the time of the motor-vehicle accident as she was not compensated for driving to work; she was not required or expected by her employer to provide groceries for her clients; she acknowledged that on the day of the accident her clients' father had not asked her to stop and purchase groceries; and she was not grocery shopping or doing anything related to her job as a personal-care aide at the time of her injury as she was merely traveling to work. *Black v. First Step, Inc.*, 2014 Ark. App. 341 (2014).

In a workers' compensation case, a claimant failed to prove that he suffered a compensable injury because he was not performing employment services at the time that he injured his ankle when attempting to go to the bathroom; the claimant's work day had ended and he was not required to do anything, so he was not taking a necessary bathroom break. Moreover, the claimant was not considered a residential employee since the injury did not occur in his truck and was not related to sleeping in his truck. *Trezza v. USA Truck Inc.*, 2014 Ark. App. 555, 445 S.W.3d 521 (2014).

Evidence.

Substantial evidence supported the Workers' Compensation Commission's decision to award additional treatment for a knee injury given its findings that the symptoms of sciatica resulting from the knee injury, as opposed to a back injury, and anything related to it should have been covered. *Wright v. Conway Freight*, 2014 Ark. App. 451, 441 S.W.3d 45 (2014).

Healing Period.

Workers' Compensation Commission did not err under subdivision (12) of this section in failing to award an employee temporary total disability benefits beyond March 9, 2010 because there was a substantial basis for its finding that the employee's healing period for the compensable back injury had ended by March 9, 2010. *Towler v. Tyson Poultry, Inc.*, 2012 Ark. App. 546, 423 S.W.3d 664 (2012).

Workers' Compensation Commission's opinion displayed a substantial basis for the denial of the employee's claim for an

additional period of temporary total-disability benefits because the Commission exercised its duty to assess the weight and credibility of evidence regarding whether the employee's healing period had ended and whether he was totally incapacitated from earning wages, and substantial evidence supported the factual findings that the healing period ended by February 2011 and that the employee was not totally incapacitated from earning wages. *Jordan v. Home Depot, Inc.*, 2013 Ark. App. 572, 430 S.W.3d 136 (2013).

Substantial evidence supported the denial of additional temporary total disability where, just prior to his release to return to work, the claimant underwent a functional capacity evaluation that reflected that he had put forth an unreliable effort, the ALJ noted that there were multiple examples of inconsistency in effort contained in the report, and mere days after being cleared for work, the claimant resigned. *Bankston v. Univ. of Ark. at Little Rock*, 2017 Ark. App. 72, 510 S.W.3d 825 (2017).

Workers' Compensation Commission did not err in determining the end date for the driver's healing period as it noted and compared the physicians' opinions and found that the evidence, including the surveillance footage, showed the driver able to walk, bend, and drive a vehicle. *Marten Transp., Ltd. v. Morgan*, 2017 Ark. App. 608, 532 S.W.3d 139 (2017).

Award of temporary total disability for a limited period of time was appropriate because there was no medical evidence that the claimant was incapacitated from earning wages after the end of the time period, based on the only medical document addressing the issue, which was an off-work slip from a doctor taking the claimant off work for the limited period of time. There was no medical opinion expressing that claimant was incapacitated from work at any time after that period, and no doctor took him off work beyond the end date of that period. *Wall Farms, LLC v. Hulsey*, 2017 Ark. App. 624, 534 S.W.3d 771 (2017).

Workers' Compensation Commission properly reversed the administrative law judge's decision granting temporary total disability benefits to a claimant who slipped and fell on her hands and knees when she was at work on April 22, 2016, because claimant was determined to have

reached maximum medical improvement on April 25, 2016, she failed to prove any other compensable injuries other than those to her right arm and left knee, she had been released to return to work, and her own testimony established that her noncompensable back injury was the reason she could not return to work. *Davis v. Remington Arms Co.*, 2018 Ark. App. 390, 557 S.W.3d 894 (2018).

Substantial evidence supported the Workers' Compensation Commission's finding that the surgery performed on the worker was reasonable and necessary and that she remained in her healing period and was entitled to temporary total disability benefits. The authority of the Commission to resolve conflicting evidence extends to medical testimony; thus, the Commission acted within its authority in giving more weight to one doctor's recommendation for surgery than to another doctor's recommendation for a delay, and the award corresponded to both doctors' opinions that the worker had not reached maximum medical recovery. *Cent. Moloney, Inc. v. Scoles*, 2018 Ark. App. 561, 565 S.W.3d 134 (2018).

Temporary total disability benefits beyond a specific date were properly denied given evidence that the claimant's healing period for his compensable cervical and thoracic strains ended on the date that a physician opined that he had reached maximum medical improvement and the lack of evidence linking the claimant's syring to his compensable injury. *Page v. Southwestern Bell Tel. Company/AT&T, Inc.*, 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Workers' Compensation Commission's decision denying a claimant's request for additional temporary total disability benefits was supported by substantial evidence where three medical opinions that his cervicothoracic syring was not causally related to his work-related motor vehicle accident conflicted with a fourth physician's report, and the Commission had accepted the medical opinions finding no causal relationship. *Page v. Southwestern Bell Tel. Company/AT&T, Inc.*, 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Injury.

Denial of permanent-disability benefits for the employee's compensable back injury was inappropriate pursuant to subdi-

vision (4)(F)(ii)(a) of this section because unrefuted testimony established that prior to the accident, he never had serious back pain and he was physically able to perform many activities and all of his work duties. *Wright v. St. Vincent Doctors Hosp. Indem. Ins. Co. of N. Am.*, 2012 Ark. App. 153, 390 S.W.3d 779 (2012).

Workers' Compensation Commission found that the worker's symptoms could not be causally related to his injury, for purposes of subdivision (4) of this section, but nothing negated the possibility of any causal relationship, and therefore the record did not support this medical conclusion; the court reversed and remanded. *Vijil v. Schlumberger Tech. Corp.*, 2012 Ark. App. 361 (2012).

As there was an obvious, direct correlation between the injury appellant claimed he suffered at work (a blister) and the specific incident he alleged caused that injury (repeatedly walking wearing ill-fitting work-supplied boots), it was not an "unexplained injury"; therefore, he was entitled to benefits under subdivision (4)(A)(i) of this section. *Pearson v. Worksource*, 2012 Ark. 406, 424 S.W.3d 311 (2012).

Claimant had the burden, under subdivision (4)(E) of this section, to prove a compensable injury by a preponderance of the evidence. *Swink v. Rest. Mgmt.*, 2012 Ark. App. 490 (2012).

There was evidence supporting appellant's claim that she suffered a compensable injury to her knee, but this did not warrant reversal, as the question was whether substantial evidence supported the Workers' Compensation Commission's decision, not whether the evidence supported contrary findings. *Swink v. Rest. Mgmt.*, 2012 Ark. App. 490 (2012).

Workers' Compensation Commission found from the evidence that appellant had been seen by a doctor previously for her knee issues, which supported the conclusion that if she did fall at work, this did not play a causal role in her knee issues; there was a substantial basis for denying the claim. *Swink v. Rest. Mgmt.*, 2012 Ark. App. 490 (2012).

Pursuant to subdivision (4)(F)(ii) of this section, an appellate court declined to reverse an award of disability benefits to an employee for a spine injury because there was ample evidence that the employee was not capable of performing the

work duties that the employee had previously been able to perform before a work-related fall. *Efird v. Whelan Sec., Inc.*, 2012 Ark. App. 548, 423 S.W.3d 643 (2012).

Workers' compensation benefits were not awarded to a claimant for gradual-onset injuries to the neck and back under subdivisions (4)(A) and (E) of this section because the injuries were not reported between 2009 and 2011, and no medical treatment was sought between 2003 and 2011. It was the role of the Workers' Compensation Commission to judge the credibility of the witnesses. *King v. Superior Wheels*, 2013 Ark. App. 95 (2013).

Workers' Compensation Commission found the claimant was not credible and assigned minimal weight to one doctor's report, but found another doctor's statement that the claimant did not have an injury to his head, spine, or neck belied the claimant's assertion in that regard; because the claimant did not establish a causal relationship between his injury and his employment, the conclusion that he did not prove he sustained a compensable injury was supported by substantial evidence. *Vijil v. Schlumberger Tech., Corp.*, 2013 Ark. App. 346, 427 S.W.3d 796 (2013).

Worker was on his lunch break when the injury occurred, he was not required to stay on premises during his break or perform job-related duties, and the injury occurred when the break was only half over and he did not intend to immediately return to work, such that the employer did not benefit from the worker's actions, which were for his own convenience; substantial evidence supported the finding that the injury did not occur within the time and space boundaries of employment and was therefore not compensable. *Shelton v. Qualserv Am. Cas. Co.*, 2013 Ark. App. 469 (2013).

Workers' compensation claimant was unable to show a gradual injury to his neck since he did not establish that the injury arose out of and in the course of his employment; the only evidence was speculation offered by the claimant. Test results showed disc abnormalities and multilevel degenerative disc disease, and the Workers' Compensation Commission afforded more weight to the degenerative condition, stating it could have been a factor in the injury and need for treatment. *Kimble*

v. Labor Force, Inc., 2013 Ark. App. 601, 430 S.W.3d 156 (2013).

Workers' compensation claimant was unable to show a neck injury that was caused by a specific incident and was identifiable by time and place of occurrence because he failed to identify a work event that caused his injury; he did not remember an acute trauma or report any incident or injury, he did not stop working, he was able to complete his shift, and he did not report any injury or incident to co-workers or supervisors. *Kimble v. Labor Force, Inc.*, 2013 Ark. App. 601, 430 S.W.3d 156 (2013).

In a dueling-doctors case, a court was bound by the findings of the Workers' Compensation Commission under subdivisions (4)(A)(ii)(b) and (E)(ii) of this section that the employee failed to prove that he sustained compensable carpal-tunnel injuries as a result of his employment. *Thrapp v. Smith Blair, Inc.*, 2013 Ark. App. 683, 430 S.W.3d 810 (2013).

Workers' Compensation Commission properly affirmed and adopted an administrative law judge's (ALJ) denial of benefits for a right-shoulder injury because the employee failed to prove a causal connection between objective findings of an injury and a work-related incident where the only evidence in the record supporting the employee's claim that he suffered a work-related shoulder injury was his own testimony, which the ALJ found not credible. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62 (2014).

Triggering of the statutory presumption shifted the burden of proof to the employee to prove by a preponderance of the evidence that the injury or accident was not substantially occasioned by his use of illegal drugs. *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, 432 S.W.3d 25 (2014).

Workers' Compensation Commission arbitrarily disregarded testimony submitted in support of the employee's claim, and the decision that he failed to rebut the presumption that his accident was not substantially occasioned by the use of illegal drugs was not supported by substantial evidence; the employee testified that he was not intoxicated on the day of the accident, and he presented evidence that no one saw him impaired as the result of drug intoxication on the day of the acci-

dent. *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, 432 S.W.3d 25 (2014).

Medical testing of the employee established the presence of marijuana metabolites, which triggered the statutory presumption that the injury or accident was substantially occasioned by the use of illegal drugs. *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, 432 S.W.3d 25 (2014).

Workers' Compensation Commission erred in finding that the employee failed to rebut the statutory presumption that his accident was substantially occasioned by his use of marijuana, because the Commission arbitrarily disregarded any testimony supporting the employee's claim, which included testimony by coworkers and a supervisor that the employee was not impaired at the time of the accident, and merely speculated that the employee was high. *Prock v. Bull Shoals Boat Landing*, 2014 Ark. 93, 431 S.W.3d 858 (2014).

It was the worker's burden to prove a compensable injury, not the employer's burden to disprove one. *Dismute v. Potlatch Corp.*, 2014 Ark. App. 176 (2014).

Substantial evidence supported the determination by the Workers' Compensation Commission that the worker failed to meet his burden of establishing a compensable injury, given in part the testimony that the worker was not lifting any lumber when he allegedly hurt his back, and a doctor stated that the worker did not sustain any objective change in his physical findings as a result of the alleged accident. *Dismute v. Potlatch Corp.*, 2014 Ark. App. 176 (2014).

Workers' Compensation Commission found a compensable injury, as the worker was directly advancing the company's interests at the time of the incident and the company benefitted from the work the worker performed, and it was clear that the Commission's decision to reverse was based on issues of credibility alone; because questions of credibility were the exclusive province of the Commission, the court was foreclosed from determining the weight and credibility to be accorded to the testimony, and the court affirmed. *Hill v. Treadaway*, 2014 Ark. App. 185, 433 S.W.3d 285 (2014).

—Aggravation.

Workers' Compensation Commission properly found that an employee sus-

tained a new compensable injury and was entitled to temporary total disability benefits and attorney's fees after he felt abrupt, excruciating pain as he stepped down from an excavator and required help to take him to a hospital; while the employee had preexisting chronic back pain, a new MRI showed, and two doctors stated, that the employee's spine had new and/or different injuries. *Greene Cty. Judge v. Penny*, 2019 Ark. App. 552, 589 S.W.3d 478 (2019).

Employment circumstances that aggravate preexisting conditions are compensable; an aggravation is a new injury resulting from an independent incident and must be evidenced by objective medical findings of a new injury to the preexisting condition. *Greene Cty. Judge v. Penny*, 2019 Ark. App. 552, 589 S.W.3d 478 (2019).

—Arising Out of and in the Course of Employment.

Workers' Compensation Commission did not err in reversing an administrative law judge and in dismissing an employee's claim, because the only issue in the case was whether there was substantial evidence to support the Commission's decision, and the Full Commission's opinion adequately explained why it found that the employee failed to prove she was providing employment services at the time of her accidental injuries. *Ness v. Fort Smith Pub. Sch. Dist.*, 2014 Ark. App. 118 (2014).

Workers' Compensation Commission's finding that a housekeeper was acting within the course and scope of her employment was supported by substantial evidence where she testified that her primary purpose in going to the laundry room was to get clean towels. *Best Western Inn v. Paul*, 2014 Ark. App. 520, 443 S.W.3d 551 (2014).

Claimant for workers' compensation benefits failed to prove that the claimant's injury arose out of and in the course of the claimant's employment because the claimant was on a personal errand to retrieve food for the claimant's own benefit when the claimant injured the claimant's knee in a slip and fall accident while stepping into an elevator at the hospital where the claimant worked. *Ganus v. St. Bernard's Hosp., LLC*, 2015 Ark. App. 163, 457 S.W.3d 683 (2015).

Workers' Compensation Commission, which determined that a claimant sus-

tained a compensable injury arising out of and in the course of her employment, could reasonably conclude that the claimant's briefly leaving her workstation to get a snack did not detract from her job duties, which benefited her employer, directly or indirectly. There was nothing in the record to suggest that the claimant's actions were inconsistent with her employer's interest in advancing the work. *Centers for Youth & Families v. Wood*, 2015 Ark. App. 380, 466 S.W.3d 422 (2015).

Workers' Compensation Commission's decision that a truck driver in training sustained a compensable injury was supported by substantial evidence where, as a trainee, the driver was expected to study or practice backing up the truck, the injury occurred within the truck during a period when the driver was not enjoying a leisure time off or free to do as he pleased, and reasonable minds could have concluded that a discussion of the testimony concerning the timing of a Facebook post was unnecessary in reconciling conflicting evidence. *P.A.M. Transp., Inc. v. Eason*, 2018 Ark. App. 77, 540 S.W.3d 308 (2018).

Workers' Compensation Commission did not err in awarding benefits to the claimant, an administrative assistant, because reasonable minds could conclude that the claimant was acting within the scope and course of her employment and directly or indirectly advancing her employer's interests when she slipped and fell, and, whether she was technically "on" or "off" the clock was not dispositive, as the claimant was expected to respond to work queries if she was approached away from her desk or before her regular work hours began; and the claimant was inside the building, and was on her way to her office when she was injured. *Ark. Sec'y of State v. Young*, 2018 Ark. App. 508, 559 S.W.3d 331 (2018).

Substantial evidence supported the Workers' Compensation Commission's decision that a housekeeper failed to establish a compensable injury because she was not performing employment services at the time of the accident; substantial evidence supported the Commission's finding that the housekeeper was on her way to lunch when she fell in the lobby because she told the human resources office immediately following the incident that she fell when she was going to lunch and both the

human resources officer and the housekeeping supervisor testified that the housekeeper was walking toward the front door when she fell. *Rodriguez-Gonzalez v. Jamestown Health & Rehab, LLC*, 2019 Ark. App. 530, 589 S.W.3d 408 (2019).

Workers' Compensation Commission did not err in finding that the claimant was performing employment services at the time she was injured because she testified that during her break she remained on duty and in the building, she was clocked in, and she remained on call and available to work; she testified that she was the only unit coordinator on her shift and that if she had been called to return to her desk based on an emergency or a trauma, she would have been required to do so; she stated that she had been called back three or four times in the past; and the employer derived a benefit from the claimant's remaining in the building, immediately available to resume her duties. *Univ. of Ark. for Med. Scis. v. Hines*, 2019 Ark. App. 557, 590 S.W.3d 183 (2019).

Workers' compensation claimant was not performing employment services at the time of his injury where there was no testimony that he was assisting a customer at the time of his fall, that he had ever done so before clocking in, that he had to go through security obstacles before reaching the employer and clocking in, or that the injury took place in an area where he was expected to be engaged in work duties. *Pratt v. Landers McLarty Bentonville*, 2021 Ark. App. 184 (2021).

Requirement that a workers' compensation claimant park in a certain lot did not render his injury compensable where his fall took place in an area he was warned not to be while on his way to clock in for work, and the claimant conceded that his fall took place at a time when he was not performing any job responsibilities for the employer. *Pratt v. Landers McLarty Bentonville*, 2021 Ark. App. 184 (2021).

— Assaults.

Claimant was entitled to workers' compensation benefits when a co-worker repeatedly hit the claimant with a baseball bat during an altercation that occurred in their employer's parking lot on the morning of a supervisor-called meeting between the parties regarding an incident

between them the previous day; the claimant was not an active participant in the assault and the claimant was performing employment services at the time of the assault as he was well within the time and space boundaries of his employment. *Dorn v. Hous. Auth. Pine Bluff*, 2017 Ark. App. 309, 522 S.W.3d 167 (2017).

Substantial evidence supported the Workers' Compensation Commission's finding that decedent restaurant employee was killed during and in the course and scope of his employment because all of the evidence demonstrated that the decedent was carrying out his employer's purpose and advancing its interests at the time of his death during the armed robbery; accordingly, the Commission properly found that the employer was protected by the exclusive-remedy provision. *Herrera-Larios v. El Chico* 71, 2017 Ark. App. 650, 535 S.W.3d 305 (2017).

—Gradual Development.

Substantial evidence supported the finding that the employee sustained a compensable gradual-onset injury to her lower back; there was no evidence that the employee experienced any back problems prior to her employment, there was documentation that her pain was exacerbated by working, and her pain persisted and ultimately required her to quit work. *Lowe's Home Ctrs. v. Pope*, 2016 Ark. App. 93, 482 S.W.3d 723 (2016).

—Carpal Tunnel Syndrome.

Substantial evidence supported the Workers' Compensation Commission's finding of a compensable injury where objective medical findings showed that the worker developed bilateral carpal tunnel syndrome while employed solely by the employer for a period of six years, that his job with the employer was repetitive and hand-intensive, and that he received reasonably necessary treatment for the condition. *W L Harper Co. Am. Zurich Ins. Co. v. Woods*, 2016 Ark. App. 431 (2016).

—Causal Connection.

Workers' Compensation Commission properly denied the claimant's claim for permanent partial impairment because she failed to establish through her own testimony or other means that either the annular tear or muscle spasms supported the existence of a permanent impairment causally related to her 2009 injury.

O'Guinn v. Little River Mem'l Hosp., 2013 Ark. App. 593, 430 S.W.3d 150 (2013).

Workers' Compensation Commission properly denied an employee's claim for benefits for a back injury allegedly incurred when she fell on a wet floor at work because the employee had a long history of degenerative joint disease that had progressively worsened and a statement in a doctor's notes allegedly providing the necessary causal connection between her fall at work and the back injury appeared to be a recitation of medical history given by the employee herself. *Hymes v. Pinewood Health Rehab.*, 2014 Ark. App. 320 (2014).

An impairment rating could be based on annular tears only if the tear resulted from the compensable injury, and the causal connection was a fact question for the Workers' Compensation Commission to decide. *Thompson v. Mt. Home Good Samaritan Vill.*, 2014 Ark. App. 493, 442 S.W.3d 873 (2014).

Substantial evidence supported the Workers' Compensation Commission's finding that a claimant failed to prove that the claimant sustained a compensable head injury in a motor vehicle accident because there were no complaints by the claimant regarding the claimant's head or brain having been injured in the accident until more than two years following the event. Furthermore, there was no evidence that an MRI finding of scarring was related to the accident. *Myers v. City of Rockport*, 2015 Ark. App. 710, 479 S.W.3d 33 (2015).

Because the Workers' Compensation Commission failed to make any causal-connection findings in connection with the claimant's July 2017 right-shoulder injury, reversal and remand for the Commission to do so was appropriate. *Reed v. First Step, Inc.*, 2019 Ark. App. 289, 577 S.W.3d 424 (2019).

—Causal Connection Not Shown.

In a workers' compensation case, a claimant did not recover for neck and shoulder injuries because causation was not established; a doctor's report was not given weight where it was based on subjective information provided by the claimant; it was not credible that a minor incident described by the claimant caused all the fairly serious injuries as alleged; moreover, the claimant had reported problems with her neck, as well as numbness,

pain, and tingling in her hands for years prior to the work-related incident. *Hosey v. Wal-Mart Assocs.*, 2016 Ark. App. 189, 487 S.W.3d 837 (2016).

Workers' Compensation Commission properly found that claimant failed to prove that he sustained a compensable injury while acting in the course and scope of his employment where there was no evidence that he was working for the employer during a seizure that preceded the brain scan on which he relied, there was no evidence of a causal connection between a suggested laceration in the brain scan and the work accident, given that a brain scan on the date of the work accident revealed no abnormal findings, and claimant failed to argue against the possibility that the subsequent seizure may have been an intervening cause for the suggested laceration. *Garcia v. Jensen Constr. Co.*, 2017 Ark. App. 450, 527 S.W.3d 749 (2017).

Workers' Compensation Commission properly denied a worker's claim that she suffered a compensable injury because there was no indication in her medical records of any injury to her left hand and wrist due to a work-related injury where her medical records only indicated left-wrist pain from a fall, not from a work-related incident, and her doctor attributed her carpal-tunnel syndrome symptoms to her morbid obesity. *White v. Butterball, LLC*, 2018 Ark. App. 7, 538 S.W.3d 240 (2018).

Workers' Compensation Commission did not err by finding that a claimant failed to establish a specific-incident compensable injury. Substantial medical evidence supported the Commission's finding that the claimant failed to prove a causal connection between any event on a specified date and his elbow condition; although it was one physician's opinion that the claimant's elbow condition resulted from an injury sustained at work, that opinion was based on the claimant's self-reported history, and objective medical evidence showed that the claimant had a prior history of elbow pain. *Clark v. Williamson G.C., Inc.*, 2018 Ark. App. 331, 550 S.W.3d 458 (2018).

Substantial evidence supported the Workers' Compensation Commission's decision that the worker failed to meet her burden of proving that her back injury arose out of and in the course of her

employment; her first low-back complaints began three months after her fall at work and she first sought treatment for her back pain 73 days after the fall, and given the lapse of time between her fall and the manifestation of her symptoms, reasonable persons might disagree about the causal connection between the two. *Webb v. Wal-Mart Assocs.*, 2018 Ark. App. 627, 567 S.W.3d 86 (2018).

Substantial evidence supported the Workers' Compensation Commission's decision that the claimant failed to prove that her left-shoulder problems were causally connected to an incident at work as they were degenerative in nature. *Reed v. First Step, Inc.*, 2019 Ark. App. 289, 577 S.W.3d 424 (2019).

Workers' Compensation Commission properly affirmed and adopted the findings of fact and conclusions of law made by an administrative law judge that an employee did not sustain the cervical injury in the same accident that caused a hairline fracture to her sternum because the employee did not convey any problems with her neck for two weeks, the initial medical records affirmatively indicated that there were no problems with her neck, and it could not be said that fair-minded persons with the same facts before them could not have reached the conclusions of the Commission. *Bledsoe v. Viskase Cos.*, 2020 Ark. App. 53, 593 S.W.3d 512 (2020).

—Evidence.

It was the worker's burden to prove that his back injury arose out of and in the course of his employment, in addition to the other requirements for a compensable injury; his conflicting statements regarding the cause of his injury were indeed relevant to the determination of whether he proved that he sustained a compensable injury, and the administrative law judge did not deny the claim based on a failure to give sufficient notice. *Leming v. La-Z-Boy, Inc.*, 2015 Ark. App. 336, 463 S.W.3d 719 (2015).

Substantial evidence supported the Workers' Compensation Commission's decision that an employee failed to establish that she had sustained a compensable back injury while working for the employer because the employee admitted she had been treated for back pain prior to the accidents; the employee did not immedi-

ately report the accident to her employer and paid for the medical treatment herself, and no coworker knew about the accident or the injury until several weeks after the occurrence. *Halliday v. N. Ark. Reg'l Med. Ctr.*, 2016 Ark. App. 392, 500 S.W.3d 198 (2016).

Employee argued that because no alternative explanation for his knee injury was proven or even offered, the Workers' Compensation Commission was required to speculate to find that his claim was not compensable, but the court disagreed; to prove the occurrence of a specific-incident compensable injury, employee had to establish that the injury was one arising out of and in the course of employment, and as the Commission was to determine credibility, weigh the evidence, and resolve conflicts in medical testimony and evidence, the Commission's decision was supported by substantial evidence in this case. *Godwin v. Garland Cnty. Landfill*, 2016 Ark. App. 498, 504 S.W.3d 660 (2016).

Workers' Compensation Commission did not err in finding that a claimant's compensable injury was established by objective medical evidence given the treating physician's treatment notes, and the progression of the injury that led to amputation of the claimant's toe. *St. Jean Indus. v. Ezell*, 2016 Ark. App. 516, 504 S.W.3d 679 (2016).

Workers' Compensation Commission's decision denying compensability of a worker's claim was supported by substantial evidence where the Commission had considered a treating physician's report noting the presence of muscle spasms in the cervical and lumbar spine, the evidence that the claimant suffered from preexisting conditions in his neck, back, hip, and head, the Commission found the claimant not credible based on his conflicting answers about the extent of his injuries, and the case turned on the claimant's credibility. *Johnson v. P.A.M. Transp., Inc.*, 2017 Ark. App. 514, 529 S.W.3d 678 (2017).

Substantial evidence supported the Workers' Compensation Commission's finding that a claimant failed to prove physical bodily harm where it focused on a medical note in a treating physician's report stating that the incident in which the claimant lifted a lot of weight did not or may not have caused the radiological find-

ings in his back. *Grantham v. Hornbeck Agric. Group, LLC*, 2017 Ark. App. 520, 529 S.W.3d 666 (2017).

Workers' Compensation Commission did not err in concluding that a truck driver suffered a compensable injury when he tripped and fell; the Commission weighed the conflicting evidence, the employer pointed to no evidence indicating that the driver had a herniated disc before the fall, and an MRI indicated acute disc herniation that a neurosurgeon causally correlated to the incident at work. *Marten Transp., Ltd. v. Morgan*, 2017 Ark. App. 608, 532 S.W.3d 139 (2017).

Workers' Compensation Commission's findings as to the date of compensability were supported by substantial evidence; the finding that the claimant sustained compensable back injuries in a later incident while working on a farm was supported by objective medical findings, while there was a lack of objective medical findings to support the claimant's claim of a compensable back injury in an earlier incident at work. *Wall Farms, LLC v. Hulsey*, 2017 Ark. App. 624, 534 S.W.3d 771 (2017).

Employee sustained a compensable injury to his neck when moving a desk, as there was a significant change in his condition following the work accident; his prior neck injury had not limited his activities following his military discharge, and the evidence showed a current herniated disc with spinal bleeding, indicative of an acute injury. *Ark. Dep't of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924 (2020).

—Head Injury.

Workers' Compensation Commission did not err in affirming and adopting the administrative law judge's opinion that the claimant sustained a compensable head injury as there was substantial evidence to support the finding that she fell off a yoga ball at work and suffered a scalp contusion. The Commission did not err in giving more weight to an audiologist's opinion that the claimant's current complaints were caused by her fall at work and not her preexisting conditions; the audiologist found that the ringing in the claimant's ears was made worse after her fall due to swelling in the nerves, and that her current vertigo complaint more likely than not was a result of the impact to her

head, and not the 2012 car accident. *Northwest Ark. Cmty. College v. Migliori*, 2018 Ark. App. 286, 549 S.W.3d 399 (2018).

—Independent Intervening Cause.

Workers' Compensation Commission properly denied death benefits to a deceased worker's surviving beneficiaries because the decedent had been using opiates for some time prior to his compensable injury, had a proclivity to drug addiction, and the decedent's overdose and resultant death was unreasonable and an independent intervening cause not related to the work where he took a substantial overdose of methadone that was not in response to uncontrolled pain, but was instead simply the result of his drug addiction. *Loar v. Cooper Tire & Rubber Co.*, 2014 Ark. App. 240 (2014).

Workers' Compensation Commission properly awarded an employee additional-medical benefits because he had been receiving various benefits for nearly two years before he filed an AR-C Form, the first hearing on the employee's claim for additional-medical benefits was held more than eight years later, the "additional follow-up care" sought by the employee was reasonably necessary medical treatment, and a subsequent car wreck was not an independent intervening cause of the employee's need for further medical treatment where his conduct was not unreasonable and he was never restricted from driving by any doctor. *Nabholz Constr. Corp. v. White*, 2015 Ark. App. 102 (2015).

Substantial evidence supported the findings that a worker's compensation claimant, who had worked as a correctional officer for 23 years, was entitled to 20% wage-loss disability in addition to a 3% anatomical rating and that the compensable back injury was the major cause of the disability, despite the employer's contention that an unauthorized surgery constituted a nonwork-related independent intervening cause that was improperly considered in awarding wage loss. The findings were based on proper wage-loss factors, the opinion adequately discussed the rationale, and the causation findings were supported by the claimant's testimony and medical evidence. *Ark. Dep't of Corr. v. Jackson*, 2019 Ark. App. 124, 571 S.W.3d 539 (2019).

—Intoxicants.

Workers' Compensation Commission properly awarded temporary total-disability benefits to an employee because the Commission found that the employer and its insurance carrier failed to establish the presence of illegal drugs in the employee's body, and the rebuttable statutory presumption was not triggered; no urine, blood, or hair-follicle test was administered, no drug or drug paraphernalia was found on the employee's person, and, while the employee allegedly said that he ingested methamphetamine within 24 hours of the accident, no medical personnel were questioned about what he supposedly said, and the employee's testimony that he was still being treated for his injury was substantial evidence that he was within his healing period when the hearing occurred. *Nat'l Transit Staffing, Inc. v. Norris*, 2018 Ark. App. 229, 547 S.W.3d 730 (2018).

Appellate court affirmed the Workers' Compensation Commission's decision denying an employee's claim for benefits based on his failure to rebut the statutory presumption that the accident was substantially occasioned by alcohol; although witnesses testified that there was no indication that the employee was intoxicated, the employee's blood tested positive for alcohol at the hospital on the morning of his one-car accident, which had occurred while he was driving to the airport to travel to meet with an out-of-state customer, and a physician/toxicologist, who testified as an expert witness, opined that alcohol contributed significantly to the cause of the accident. *Papageorge v. Tyson Shared Servs.*, 2019 Ark. App. 603, 590 S.W.3d 800 (2019).

Denial of benefits to a claimant was appropriate because the Workers' Compensation Commission found that the claimant failed to rebut the presumption that her injury was substantially occasioned by the use of illegal drugs when she severed part of her finger while using a cutting machine and tested positive for marijuana metabolites immediately after the accidental injury. The claimant, who had been at the job only five days when injured, offered no evidence except her self-serving testimony as to how and whether she was trained by the employer. *Blair v. Am. Stitchco, Inc.*, 2020 Ark. App. 38, 593 S.W.3d 44 (2020).

Claimant, who tested positive for marijuana, failed to rebut the statutory presumption that his work-related injury was substantially occasioned by the use of illegal drugs; further, the Workers' Compensation Commission made express findings regarding the credibility of the witnesses and it is not the role of the appellate court to reweigh the evidence. *Allen v. Employbridge Holding Co.*, 2020 Ark. App. 127, 594 S.W.3d 165 (2020).

—Neck.

Medical tests detected only early degenerative neck changes and contained no findings supporting a neck injury attributable to a traumatic event at work; there was a failure of proof of objective medical findings to support a compensable neck injury. *Lowe's Home Ctrs. v. Pope*, 2016 Ark. App. 93, 482 S.W.3d 723 (2016).

—New Injury.

Workers' Compensation Commission properly awarded an employee temporary total disability compensation because he proved he had a compensable injury; the objective evidence showed that the employee's injuries prior to surgeries had been greatly improved, if not eradicated, by the time he returned to work after surgery and were aggravated by the work injury he received the day after he returned to work. *City of El Dorado v. Smith*, 2017 Ark. App. 307, 521 S.W.3d 523 (2017).

Workers' Compensation Commission did not err in finding that an employee remained in his healing period after he saw a doctor. The doctor appeared to have given contrary opinions, one in which the employee experienced a new work injury that aggravated his pre-existing conditions and another in which he was not suffering from a new injury with his symptoms simply being a continuation of previous, pre-surgery symptoms, and the appellate court deferred to the commission's resolution of conflicting evidence. *City of El Dorado v. Smith*, 2017 Ark. App. 307, 521 S.W.3d 523 (2017).

Workers' Compensation Commission did not err in awarding an employee medical benefits in the form of surgery because the employee testified that a doctor was recommending surgery, and there was no evidence before the Commission to the contrary. *City of El Dorado v. Smith*, 2017 Ark. App. 307, 521 S.W.3d 523 (2017).

—Not Shown.

There was a substantial basis for the Workers' Compensation Commission to find that the claimant failed to establish a compensable lower-back injury, given the lapse of time between the injury and the claimant's complaints of lower-back pain and doctors' opinions that the lower-back MRI showed degenerative, preexisting changes. *Newby v. Century Indus.*, 2017 Ark. App. 527, 530 S.W.3d 386 (2017).

Workers' Compensation Commission properly found that the claimant failed to prove that she sustained a compensable injury; there was simply no evidence of a specific injury other than the claimant's own testimony, and witness credibility was for the Commission to decide. *Johnson v. NPC Int'l, Inc.*, 2018 Ark. App. 25, 538 S.W.3d 859 (2018).

Workers' Compensation Commission properly determined that a worker did not suffer a compensable injury when he allegedly slipped and fell on a sheet of ice on a freezer floor because the Commission specifically found the worker not to be a credible witness, there were no witnesses to corroborate his claim, the worker did not report the incident until over a month later after the accident, he gave competing reasons for his neck pain to his medical providers, and an MRI only noted degenerative changes. *Collier v. Walmart Assocs.*, 2018 Ark. App. 129, 544 S.W.3d 69 (2018).

There was a substantial basis for the Workers' Compensation Commission's denial of a worker's claim where there was no indication in her medical records that her back injury was work-related, she had no witness to corroborate her story about the alleged cause of her neck or back problems, and she never reported any alleged work-related incident to her supervisor until her doctor sent her for an MRI almost a month after she claimed the alleged incident occurred. *Gunter v. Bill's Super Foods, Inc.*, 2018 Ark. App. 134, 544 S.W.3d 571 (2018).

Claimant failed to prove that he sustained a compensable injury while employed by the logging company because the Commission believed the testimony of the logging company's witnesses that the claimant did not injure himself in the woods lifting a boulder on May 9, 2016, and did not complain of — or report — an injury or back pain; the logging company

introduced evidence that the claimant had been involved in a traumatic high-speed ATV accident that had put him off work for two weeks just over a month before his alleged back injury; and the evidence before the Commission could have supported a finding that the claimant went to the emergency room on May 9, 2016, seeking drugs and was willing to fabricate an injury to obtain them. *Hargis v. Lovett*, 2018 Ark. App. 227, 547 S.W.3d 724 (2018).

Workers' Compensation Commission's finding that an employee's right-knee injury was not work-related was supported by the evidence because the employee did not experience pain or swelling in her right knee until after her knee popped and buckled while she was standing at church; the employee was able to complete her job duties and drive herself to church without any indication that she was injured. *McCutchen v. Human Dev. Ctr.*, 2018 Ark. App. 239, 547 S.W.3d 508 (2018).

Workers' Compensation Commission did not err in denying medical treatment for the claimant's lower back, wrists, and thumbs as she failed to prove that she sustained any compensable injuries other than the stipulated compensable injuries to her right arm and left knee; claimant did not show that the additional injuries were causally connected to her work accident as the claimant did not report those injuries during her treatment on the day of the accident, another doctor's MRI of the claimant's lumbar spine showed chronic degenerative problems with no reference to an acute injury, and x-rays of her thumbs revealed degenerative arthritis. *Davis v. Remington Arms Co.*, 2018 Ark. App. 390, 557 S.W.3d 894 (2018).

Substantial evidence supported the Workers' Compensation Commission's decision to deny benefits to a pro se claimant because medical records revealed that, for years before the claimant's fall at work, the claimant suffered from the physical symptoms that she alleged were the result of the injury at work. Furthermore, there was no post-accident medical evidence to establish any of the claimant's alleged injuries with objective findings as required. *Marshall v. Ark. Dep't of Corr.*, 2020 Ark. App. 112, 594 S.W.3d 160 (2020).

—Performing Employment Services.

Claimant, a staff pharmacist, sustained a compensable injury, as he was performing employment services when he broke his leg climbing the curb of the pharmacy because he approached the pharmacy to check on the building after the security alarm sounded. There was testimony that claimant and the pharmacy manager agreed that claimant had to go to the pharmacy to check the alarm; and there was testimony that the police refused to disclose whether the building had been physically breached, which related directly to claimant's job description that he was responsible for ensuring the premises were secure and for preventing loss. *Kroger Ltd. P'ship I v. Bess*, 2018 Ark. App. 404, 555 S.W.3d 417 (2018).

—Preexisting Infirmary.

Workers' Compensation Commission properly denied compensability because an employee failed to prove an aggravation of a preexisting condition and to support his claim with new objective medical findings where he had been diagnosed with significant left-knee problems prior to his employment with the employer, arthroscopic surgery had already been recommended, and the employee failed to disclose his preexisting condition on an employment questionnaire. *Willis v. Great Dane Trailers*, 2014 Ark. App. 547, 444 S.W.3d 423 (2014).

Substantial evidence supported the Workers' Compensation Commission's finding that the claimant failed to prove that she suffered a compensable neck injury where she answered no when the ALJ specifically asked her whether she felt anything in her neck when she was climbing the ladder and her back popped, she did not report a neck injury on the date of the incident to her employer or doctor, her neck exam revealed no abnormalities, a doctor opined that the claimant's neck and arm complaints were not work-related, and it was undisputed that she suffered from a significant preexisting neck injury. *Willis v. Ark. Dep't of Corr.*, 2021 Ark. App. 50, 616 S.W.3d 679 (2021).

Workers' Compensation Commission's decision denying compensability for the claimant's alleged left shoulder and neck injuries displayed a substantial basis; although the employee claimed that he sustained those injuries, or aggravated them,

during a specific incident, there were several references in the medical records showing that his complaints of left shoulder and neck pain began before the alleged incident occurred. And in a neurosurgery questionnaire, the claimant himself represented that this was not a workers' compensation injury. *Osburn v. Pepsi Cola Metro Bottling Co.*, 2021 Ark. App. 157 (2021).

—Rapid Repetitive Motion.

Workers' compensation benefits were properly awarded to a claimant due to a cumulative trauma to her left knee as a rapid repetitive motion injury under this section where the claimant had to move constantly, had to climb ladders for 5 hours of an 8-hour shift, and had to move quickly in order to make quota. Substantial evidence supported the findings that the repetitive and rapidity elements were met. *Gates Corp. v. Friend*, 2015 Ark. App. 89 (2015).

Argument that the Workers' Compensation Commission erred as a matter of law in finding that a benefits claimant had sustained a cumulative trauma injury to her left knee and awarding benefits was rejected because the issue of whether an injury meets the rapid-repetitive-motion requirement is a question of fact. *Gates Corp. v. Friend*, 2015 Ark. App. 89 (2015).

Workers' Compensation Commission's decision that a highway employee's weed-eating activities did not equate to a rapid-repetitive movement for purposes of his workers' compensation claim was supported by substantial evidence; weed-eating was a "second duty" to his other tasks, it only occurred during mowing season, and the amount of time he spent actually weed-eating varied depending on where the mowing crews were working. *Carlat v. Ark. Highway & Transp. Dep't*, 2018 Ark. App. 157, 546 S.W.3d 514 (2018).

—Specific Incident.

Workers' Compensation Commission found the record devoid of credible evidence to support the worker's contention that a fracture was the result of a specific, work-related incident; the Commission did not believe the worker's testimony that he had injured his foot while working, and the appellate court was bound by that credibility determination. *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133, 514 S.W.3d 514 (2017).

Claimant proved that he sustained a compensable left-knee injury because he testified he was escorting a prisoner down the stairs with his supervisor when he felt his knee pop, and he reported it to the supervisor; although he knew an incident report needed to be filled out, he explained that he did not as they were busy; the claimant did not report the injury until two days after going to the doctor when he returned for his shift as he knew there was no light-duty work; and the administrative law judge found that the claimant suffered a new knee injury as the claimant felt his left knee pop, he developed edema and a limp, and fluid had to be aspirated from his knee. *Ark. Dep't of Corr. v. Clary*, 2018 Ark. App. 51, 541 S.W.3d 486 (2018).

Workers' Compensation Commission did not err in awarding benefits to an employee arising out of a motor vehicle accident because the issue of whether the driver of the other vehicle was traveling 30 miles an hour at the time of the accident and rear-ended the employee at a stop light or instead the employee backed into the other driver was one of credibility and weight to be accorded to the evidence. *Sears Roebuck & Co. v. Brown*, 2020 Ark. App. 93, 594 S.W.3d 896 (2020).

Substantial evidence supported the administrative law judge's and the Workers' Compensation Commission's reasons for denying the claimant benefits because the preponderance of the medical and other evidence revealed that the claimant's gastrointestinal (GI) bleed of unknown cause was idiopathic in nature and therefore not compensable; the injuries sustained to his forehead and knee as a result of fainting from blood loss were also not compensable; and, for purposes of the GI bleed, the claimant was unable to point to one specific instance while working on his shifts where he felt or experienced a physical manifestation of sustaining an injury while he was at work. *Nolen v. Walmart Assocs.*, 2021 Ark. App. 68, 618 S.W.3d 159 (2021).

—Work-Related.

Workers' Compensation Commission did not err in finding that the claimant failed to prove a work-related injury to his back, as there were numerous inconsistencies in the evidence, including the claimant's testimony that the injury occurred on one date and medical records

showing that the injury occurred two days earlier, and testimony that the claimant told a co-worker he had hurt his back at home over the weekend. *Ayers v. City of Ashdown*, 2014 Ark. App. 270 (2014).

Workers' Compensation Commission properly denied an employee's claim for benefits because the employee failed to prove that she had sustained a compensable injury; the employee admitted that she was not carrying out any tasks related to her job activity when she went to the cafeteria to get something to eat and that she was not required to perform any job duties during her break, she had no medical condition that required her to have a mid-morning snack, and her job was not particularly physically demanding, such that a snack would be necessary to continue working until she was able to eat lunch. *Fulbright v. St. Bernard's Med. Ctr. Risk Mgmt. Res.*, 2016 Ark. App. 417, 502 S.W.3d 540 (2016).

Workers' Compensation Commission did not err in finding that the injury was compensable where it acknowledged that the treating physician checked "no" in answering whether the disability arose from employment, but weighed that against the other medical evidence in the record. *St. Jean Indus. v. Ezell*, 2016 Ark. App. 516, 504 S.W.3d 679 (2016).

Workers' Compensation Commission did not err in finding a causal connection between the injury and the employment, given the claimant's testimony that a coolant had soaked his boots, socks, and feet, as well as the treating physician's notes that the claimant worked in coolant water that caused his boots to fall apart and recommending that the claimant get waterproof chemical-resistant boots. *St. Jean Indus. v. Ezell*, 2016 Ark. App. 516, 504 S.W.3d 679 (2016).

Workers' Compensation Commission did not err in concluding that the claimant's right shoulder injury was compensable because the claimant's failure to immediately report an injury or provide corroboration regarding the incident was not fatal to her claim as the administrative law judge and the Commission apparently found her to be a credible witness; while the emergency room records did not reflect that the claimant reported her injury being work-related, the claimant testified that she did inform hospital personnel of that fact; and the fact that the

family physician's notes did not state that the injury was work-related was immaterial as those notes did not include any remarks regarding how the injury occurred. *M.A. Mortenson Cos. v. Reed*, 2019 Ark. App. 569, 589 S.W.3d 487 (2019).

Intoxicants.

Workers' compensation benefits claimant failed to rebut by a preponderance of the evidence the presumption under subdivision (4)(B)(iv) of this section that an accident involving the severance of his fingers was substantially occasioned by the use of marijuana. The evidence showed that the claimant was using a machine in a manner other than how he was instructed, he tested positive for marijuana metabolites, and he admitted that marijuana made him less attentive, made it harder for him to concentrate, and made it more difficult for him to react quickly. *Hudgens v. Aid Temp. Servs.*, 2012 Ark. App. 471 (2012).

Workers' Compensation Commission did not err in affirming the award of benefits for a left-wrist injury sustained by claimant in a fall from a ladder. Because no test was performed on claimant in proximity to his work accident to establish the presence of drugs or alcohol in his system, the presumption of non-compensability under subdivision (4)(B)(iv)(b) of this section was not triggered; therefore, the burden did not shift to claimant to disprove that his work accident was substantially occasioned by the use of marijuana or alcohol. *Weld Rite, Inc. v. Dungan*, 2012 Ark. App. 526, 423 S.W.3d 613 (2012).

Workers' Compensation Commission properly denied an employee's claim for benefits based on his failure to rebut the statutory presumption that the accident was substantially occasioned by his use of illegal drugs; after the employee fell from a ladder, he was taken to a hospital where a urine sample tested positive for methamphetamine, there was no evidence that the employee ingested a medicine that contained legal methamphetamine, which might cause a false-positive result, and the employee did not prove that the angle iron behind the ladder caused his fall. *Reed v. Turner Indus.*, 2015 Ark. App. 43, 454 S.W.3d 237 (2015).

Major Cause.

Worker had bilateral quadriceps tendon tears, a doctor assigned a disability rating

of 35 and 32 percent to the right and left lower extremities respectively, and the Workers' Compensation Commission accepted the ratings and found that the worker had proven her compensable injuries to be the major cause of impairment; the Commission exercised its duty to assess the evidence to make a finding of permanent impairment, and substantial evidence supported this decision. *Firestone Bldg. Prods. v. Hopson*, 2013 Ark. App. 618, 430 S.W.3d 162 (2013).

Neck injury was not compensable because physician failed to state that the alleged work injury was the major cause for the need for treatment, and claimant testified that she could not figure out where else she would have sustained extensive wear and tear on her neck. Claimant first asserted this conclusion nearly two years after she left work without ever reporting a neck injury, and speculation and conjecture did not take the place of proof. *Weaver v. Ark. Dep't of Corr.*, 2015 Ark. App. 346, 464 S.W.3d 133 (2015).

Workers' Compensation Commission's decision that the employee suffered a gradual-onset injury to his neck was supported by substantial evidence where the Commission relied on a physician's letter that clearly stated that the significant work-obligations that the employee performed most likely contributed to the underlying condition and the development of neck pain and radiculopathy, thereby showing that the injury was a major cause of the disability or need for medical treatment. *Harrison v. Street & Performance, Inc.*, 2017 Ark. App. 611, 533 S.W.3d 648 (2017).

Workers' Compensation Commission's finding of a 37% impairment rating was affirmed; although a doctor opined that claimant's workplace injury was only 50% caused by the compensable injury, the claimant testified that he had remained quite physically active prior to the accident despite having polio, he had been able to move around with a right-leg brace and a crutch, but after the accident he was confined to a wheelchair or scooter. *Ark. State Military Dep't v. Jackson*, 2019 Ark. App. 92, 568 S.W.3d 811 (2019).

Medical Opinions.

For purposes of § 11-9-508(a), substantial evidence supported the determination that the treatment given by one doctor

was causally related to and necessary for treating the claimant's compensable injury; a 2006 MRI showed a moderate herniation, but a 2010 MRI showed a large herniation, and although a medical center claimed that a physician's opinion concerning compensability was not stated within a reasonable degree of certainty under subdivision (16)(B) of this section, the court disagreed because the physician and doctor related the treatment and surgery to the compensable cervical-spine injury, the Workers' Compensation Commission credited their opinions, and the court left the weighing of the medical evidence to the Commission. *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, 422 S.W.3d 171 (2012).

Objective Findings.

In a workers' compensation case, medical treatment provided for shortness of breath and chest pain was reasonable and necessary medical treatment for a work-related ankle injury; after the claimant began medication due to ongoing problems with his ankle, he sought treatment in the emergency room for a cardiac evaluation and diagnostic testing. Although objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and a work-related accident. *Centria, Inc. v. Bailey*, 2015 Ark. App. 270 (2015).

X-ray showed soft tissue swelling in the worker's right ankle, which could be an objective medical finding, plus an MRI, which showed swelling and that a tendon was torn, was a diagnostic test that was objective and outside the workers' control; there was no prior medical history showing that the worker had been diagnosed with a torn tendon before the fall at work, and thus there was substantial medical evidence supported by objective findings. *Lexicon Holding Co. v. Howard*, 2015 Ark. App. 292, 462 S.W.3d 696 (2015).

"Objective findings" under this section are those findings which cannot come under the control of the patient, and all of the medical evidence related to the injury, other than the x-ray, were based on the worker's subjective complaints; thus, the Workers' Compensation Commission's decision finding that the worker failed to

prove by a preponderance of the evidence a compensable back injury was supported by substantial evidence. *Leming v. La-Z-Boy, Inc.*, 2015 Ark. App. 336, 463 S.W.3d 719 (2015).

Workers' Compensation Commission determined that the claimant was entitled to a 10% permanent partial-disability rating because the 10% rating was supported by objective medical findings, including the post-injury MRI, which confirmed abnormalities in the claimant's brain; the abnormalities were causally related to the October 31, 2011, compensable injury; the claimant proved that the compensable injury was the major cause of his 10% permanent anatomical-impairment rating; and the doctor, based upon patient history, examination, the MRI, and the American Medical Association's Guides to the Evaluation of Permanent Impairment, used his medical expertise to render an opinion concerning the claimant's permanent impairment. *St. Francis County v. Watlington*, 2015 Ark. App. 497, 470 S.W.3d 684 (2015).

Substantial evidence supported the findings and conclusion of the Workers' Compensation Commission that the worker suffered a 40% permanent impairment to his wrist; the Commission interpreted pin-prick test results to reflect the partial wrist denervation mentioned in the surgical report and concluded that the rating corresponded with the median nerve distribution, and implicit in the Commission's decision was a finding that the claimant credibly testified that the doctor had manipulated his hand during the examination. *Emergency Ambulance Servs. v. Pritchard*, 2016 Ark. App. 366, 498 S.W.3d 774 (2016).

Opinion of the Workers' Compensation Commission displayed a substantial basis for the denial of relief because there were no objective medical findings to support the employee's claim; the Commission was entitled to rely on the opinion of the doctor who reviewed x-rays and MRIs but reported no objective medical findings related to the employee's injuries or an aggravation of any preexisting condition. *Bittle v. Wal-Mart Assocs.*, 2017 Ark. App. 639, 537 S.W.3d 753 (2017).

Substantial evidence supported the Workers' Compensation Commission's decision that a claimant was entitled to a 29% permanent impairment rating to the

body as a whole for a brain injury because the severity of the claimant's skull fractures and the presence of pneumocephalus on the claimant's CT scan, coupled with the testimony of a clinical psychologist and a board-certified neurologist that the claimant suffered a brain injury, established that the claimant did, in fact, suffer a compensable injury to the brain. *Multi-Craft Contrs., Inc. v. Yousey*, 2018 Ark. 107, 542 S.W.3d 155 (2018).

Workers' Compensation Commission's finding that a claimant was not entitled to permanent impairment benefits for the claimant's nerve-injury claims was appropriate because the impairment rating established by a board-certified neurologist was based solely on the claimant's level of pain. *Multi-Craft Contrs., Inc. v. Yousey*, 2018 Ark. 107, 542 S.W.3d 155 (2018).

Workers' Compensation Commission did not err in awarding benefits to the claimant because objective medical findings supported the existence of an injury to the claimant's low back as she had significant soft-tissue swelling. *Ark. Sec'y of State v. Young*, 2018 Ark. App. 508, 559 S.W.3d 331 (2018).

Workers' Compensation Commission did not arbitrarily disregard an orthopedic surgeon's medical opinion without a rational basis or based on an erroneous view of the law when it specifically considered the opinion, but noted that there was no evidence of the bus driver's left-shoulder injury before he fell in a gravel parking lot. *Lonoke Exceptional Sch., Inc. v. Coffman*, 2019 Ark. App. 80, 569 S.W.3d 378 (2019).

Because the Workers' Compensation Commission did not arbitrarily reject the orthopedic surgeon's medical opinion, the opinion was not considered in determining whether substantial evidence supported the decision that the bus driver sustained a compensable injury. Without the opinion, the bus driver's credible testimony and the post-accident medical evidence showed a left shoulder sprain, the subsequent MRI showed a tear in the left shoulder, and thus substantial evidence supported the decision that the driver sustained a compensable injury. *Lonoke Exceptional Sch., Inc. v. Coffman*, 2019 Ark. App. 80, 569 S.W.3d 378 (2019).

Workers' Compensation Commission did not err in finding that a diagnosis of "contusion" met the claimant's burden of

proving a compensable back injury supported by objective medical findings; the alleged conflict about a contusion diagnosis was contained within the same emergency-room record, and the Commission gave little weight to a physician's subsequent opinion over one month after the incident that there was no objective evidence of an injury. *TJX Cos. v. Lopez*, 2019 Ark. App. 233, 574 S.W.3d 230 (2019).

Substantial evidence supported the Workers' Compensation Commission's decision that there were no objective findings of injuries to the claimant's lumbar, thoracic, and cervical-spine areas from the second incident, as a doctor found no evidence of spasms on the day of the incident or on a follow-up visit approximately one month later, and the notation in a physical-therapy note was made two months after the incident and did not indicate the location of the spasms. *Reed v. First Step, Inc.*, 2019 Ark. App. 289, 577 S.W.3d 424 (2019).

Although compensable injuries must be established by medical evidence supported by objective findings, and complaints of pain are not objective medical findings as objective findings are those that cannot come under the voluntary control of the patient, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits. *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

There was a substantial basis for denying an employee's whole-hand/wrist and permanent impairment claims because (1) the administrative law judge (ALJ) found that the employee lacked credibility, (2) aside from an MRI report supporting the compensated thumb injury, the ALJ concluded that there were no objective medical findings of a hand injury attributable to the work injury and no impairment reports aside from an active range-of-motion evaluation, which was given little weight, and (3) swelling in the hand was slight and attributed to the effects of wearing an elastic hand brace. *Evans v. Firestone Bldg. Prods.*, 2020 Ark. App. 80, 594 S.W.3d 139 (2020).

—Hearing Loss.

Workers' Compensation Commission properly found that an employee sustained a compensable binaural hearing-

loss injury and awarded benefits; although the employee testified that he initially thought his hearing loss was only in his right ear and he reported a sensation of "fullness" in that ear, the medical evidence demonstrated that he suffered hearing loss in both ears, the two hearing tests were consistent in revealing that the employee had binaural hearing loss, and the employer and insurer did not demonstrate that subdivision (16)(A)(iii) of this section required the results of audiology tests to be adjusted for presbycusis in all cases. *Craighead Cty. v. Tipton*, 2020 Ark. App. 416 (2020).

Performing Employment Services.

Workers' Compensation Commission properly awarded an employee benefits because the employee sustained a compensable injury when he slipped on the ice while walking from the main gate of a construction site to his employer's work trailer prior to clocking in. The employee was clearly advancing his employer's interests when he complied with the general contractor's rules regarding access to the job site by donning his personal protective equipment and swiping his access card at the front gate, and the employee was not paid until he clocked in each day. *Cont'l Constr. Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762 (2015).

Substantial Evidence.

Substantial evidence supported the Workers' Compensation Commission's opinion that a claimant did not suffer a compensable injury where his owned signed statement and the testimony of two coworkers indicated that his back injury was not work related, the court deferred to the ALJ's finding that the claimant's testimony about the statement was not credible, the claimant had a history of back problems, and he could not point to a specific incident at work that prompted his injury. *Sandeford v. UPS*, 2014 Ark. App. 228 (2014).

Temporary Total Disability.

Claimant was released to perform light-duty work and there was no evidence that she was totally incapable of earning wages; there was substantial evidence to support the decision that she was not entitled to temporary total disability benefits. *Mullin v. Duckwall ALCO*, 2016 Ark. App. 122, 484 S.W.3d 283 (2016).

Timeliness.

Workers' Compensation Commission properly awarded an employee additional-medical benefits because he had been receiving various benefits for nearly two years before he filed an AR-C Form, the first hearing on the employee's claim for additional-medical benefits was held more than eight years later, the "additional follow-up care" sought by the employee was reasonably necessary medical treatment, and a subsequent car wreck was not an independent intervening cause of the employee's need for further medical treatment where his conduct was not unreasonable and he was never restricted from driving by any doctor. *Nabholz Constr. Corp. v. White*, 2015 Ark. App. 102 (2015).

services rendered, and vacation pay is that sum received as an employee benefit when no services are rendered. Therefore, in a workers' compensation case, a benefits claimant was entitled to receive temporary-total disability benefits because he did not receive his full wages during his period of disability where he received vacation pay; vacation pay was the sum received as an employee benefit when no services were rendered. *St. Edward Mercy Med. Ctr. v. Howard*, 2012 Ark. App. 673, 424 S.W.3d 881 (2012).

Cited: *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

Wages.

"Full wages" under § 11-9-807(b) refers to the money rate paid to recompense

11-9-103. Applicability.

(a) Every employer and every employee, unless otherwise specifically provided in this chapter, shall be subject to the provisions of this chapter and shall be bound thereby. However, nothing in this chapter shall be construed to conflict with any valid act of the United States Congress governing the liability of employers for injuries received by their employees.

(b) This chapter shall apply only to claims for injuries and death based upon accidents which occur from and after December 2, 1948.

(c) The Workers' Compensation Law in effect prior to December 2, 1948, shall govern all rights in respect to claims for injuries and death based upon accidents occurring prior to the effective date of this chapter.

(d) For purposes of this chapter, employment status as an employee or independent contractor is determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq.

History. Init. Meas. 1948, No. 4, § 3, Acts 1949, p. 1420; A.S.A. 1947, § 81-1303; Acts 2019, No. 1055, § 6.

Amendments. The 2019 amendment added (d).

11-9-105. Remedies exclusive — Exception. [Effective from March 11, 2020, until May 1, 2023.]

(a)(1) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his or her legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer, or any principal, officer,

director, stockholder, or partner acting in his or her capacity as an employer, or prime contractor of the employer, on account of the injury or death, and the negligent acts of a coemployee shall not be imputed to the employer.

(2) A role, capacity, or persona of any employer, principal, officer, director, or stockholder other than that existing in the role of employer of the employee shall not be relevant for consideration for purposes of this chapter, and the remedies and rights provided by this chapter shall in fact be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

(3) Requiring an employee to perform work when the employer has knowledge that, within the normal course and scope of the employee's job performance, exposure to coronavirus 2019 (COVID-19) or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations is possible, likely, or certain is not intentional conduct that would remove the employer from the protections of this chapter.

(b)(1) However, if an employer fails to secure the payment of compensation as required by this chapter, an injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under this chapter or to maintain a legal action in court for damages on account of the injury or death.

(2) In such action it shall not be necessary to plead or prove freedom from contributory negligence, nor may the defendant-employer plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his or her employment, or that the injury was due to the contributory negligence of the employee.

History. Init. Meas. 1948, No. 4, § 4, Acts 1949, p. 1420; Acts 1979, No. 253, § 1; A.S.A. 1947, § 81-1304; Acts 1993, No. 796, § 4; 2021, No. 353, § 2.

A.C.R.C. Notes. Acts 2021, No. 353, § 1, provided: "Legislative intent.

"(a) It is the intent of the General Assembly to clarify and provide sufficient recourse under the Workers' Compensation Law, § 11-9-101 et seq., for employees to receive workers' compensation benefits during the coronavirus 2019 (COVID-19) outbreak.

"(b) This act is intended to be retroactive to March 11, 2020, and to remain in effect for claims filed until May 1, 2023, for the purposes of providing coverage to employees for illness or injury sustained

as a result of the coronavirus 2019 (COVID-19) outbreak."

Publisher's Notes. For text of section effective before March 11, 2020, and after May 1, 2023, see the bound volume.

Amendments. The 2021 amendment added (a)(3) and redesignated former (a) as (a)(1) and (2); and made stylistic changes.

Effective Dates. Acts 2021, No. 353, § 4, provided: "Retroactivity. Sections 2 and 3 of this act apply to workers' compensation claims accruing on or filed on and after March 11, 2020."

Acts 2021, No. 353, § 5, provided: "Temporary legislation. This act expires on May 1, 2023, unless extended by the General Assembly."

CASE NOTES

ANALYSIS

Constitutionality.
Common-law Remedies for Retaliation.
Dual Employment.
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Employer.
Exclusivity.
Immunity.
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Third-Party Tortfeasors.
—Co-Workers.
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Constitutionality.

Circuit court did not have jurisdiction over a wrongful death claim filed by an estate due to the fact that the Workers' Compensation Commission had exclusive jurisdiction, pursuant to this statute, and jurisdiction in the circuit court was not proper based on a challenge to the constitutionality of the Workers' Compensation Law. Even though the Commission did not have the authority to declare a statute unconstitutional, such issues should have been first raised at the administrative law judge or Commission level. *Central Flying Serv., Inc. v. Pulaski County Circuit Court*, 2015 Ark. 49, 454 S.W.3d 716 (2015).

General Assembly validly exercised its constitutionally granted authority when crafting subsection (a) of this section to include "stockholders" and "principals" as "employers" for purposes of the exclusive remedy provision. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Workers' Compensation Commission's conclusion that the parent companies of the direct employer were statutory employers as principals and stockholders of the direct employer was supported by substantial evidence. Accordingly, subsection (a) of this section was constitutional as applied because the parent companies had an employment relationship with the deceased employee. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Common-law Remedies for Retaliation.

By enacting § 16-118-107, the Arkansas General Assembly did not intend to revive the individual cause of action for

common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at § 11-9-107. *Lambert v. LQ Mgmt., L.L.C.*, 2013 Ark. 114, 426 S.W.3d 437 (2013).

Dual Employment.

Benefits claimant was an employee of both a staffing agency and a company under the dual employment doctrine for purposes of the exclusive-remedy provision of this statute; both the claimant and the company operated on a belief that the claimant would have full-time employment after logging a certain amount of hours. The fact that the implied employment contract was instituted through a temporary employment agency did not negate the fact of the claimant's dual employments. *Randolph v. Staffmark*, 2015 Ark. App. 135, 456 S.W.3d 389 (2015).

Substantial evidence supported the Workers' Compensation Commission's decision that dual employment existed and that a company was a special employer immune from suit where there was a shared-services agreement between the company and a temporary-employment agency; the company had a workers' compensation policy in effect at the time of the employee's injury and was not required to prove that the employee was actually covered by the policy to be entitled to the exclusive-remedy provisions. *Pineda v. Manpower Int'l, Inc.*, 2017 Ark. App. 350, 523 S.W.3d 384 (2017).

Employees.

Negligence action against an air-ambulance helicopter pilot brought by a flight nurse and an EMT was properly dismissed because the pilot was immune from suit under the statute; at the time of a helicopter accident, the pilot, as a co-employee, was performing the employer's duty to provide a safe work place for the nurse and EMT. *Miller v. Enders*, 2013 Ark. 23, 425 S.W.3d 723 (2013).

Employer.

As used in the first sentence of subsection (a) of this section, the phrase "acting in his or her capacity as an employer" modifies only "partner", the antecedent immediately preceding it. *Myers v.*

Yamato Kogyo Co., 2020 Ark. 135, 597 S.W.3d 613 (2020).

As used in subsection (a) of this section, the qualifying phrase "acting in his or her capacity as an employer" does not modify "principal, officer, director, or stockholder" in the first sentence. Instead, the statute directs courts to consider only whether a partner is acting in their capacity as an employer. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Parties' stipulations as to the corporate structure of the employer provided evidence supporting the conclusion that the parent companies were principals and stockholders of the employer, and thus the immunity provision of subsection (a) of this section applied to the parent companies. Moreover, plaintiff did not allege that the parent companies had a status so completely independent from, and unrelated to, their status as principals and stockholders that would place the claims outside the normal employment context. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Exclusivity.

Circuit court properly dismissed an estate's wrongful-death and survival action against a decedent's employer on the ground that the claims fell within the exclusive-remedy provision of the Workers' Compensation Law because the claims were within the coverage formula of the law, even though the decedent was ultimately denied recovery due to his asbestos claim being time-barred under the law. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

Where the deceased employee had retired from his employment in 1995 but was not diagnosed with mesothelioma until 2012 and thus his workers' compensation claim was barred by § 11-9-702(a)(2)(B), his estate's civil action against the employer for wrongful death also failed; because the Workers' Compensation Law covered occupational diseases and asbestos-related claims, the exclusive-remedy provision applied to bar the civil action. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

Statute of repose creates a substantive right to be free from liability after a legislatively determined period of time, and § 11-9-702(a)(2)(B) represents a policy-driven, legislative judgment to shield an

employer from claims that arise three years after the last injurious exposure; coupled with the exclusive-remedy provision, it was not the intent to absolve an employer of liability after a period of time only to subject the employer to liability in tort after that period. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

Administrative law judge's finding that the exception to the exclusivity doctrine did not apply was affirmed where, by a plain reading of subdivision (b)(1) of this section, the employer had secured payment of compensation as required by the Workers' Compensation Law by having a workers' compensation insurance policy in effect. Unless the workers' compensation insurance policy is void ab initio, versus merely voidable, then this coverage is in existence for the protection of an injured employee. *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

Wording of this section has been interpreted and applied to mean that the employer must prove insurance coverage, not necessarily that an individual employee is in fact covered or in fact paid. *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

Substantial evidence supported the Workers' Compensation Commission's finding that decedent restaurant employee was killed during and in the course and scope of his employment because all of the evidence demonstrated that the decedent was carrying out his employer's purpose and advancing its interests at the time of his death during the armed robbery; accordingly, the Commission properly found that the employer was protected by the exclusive-remedy provision. *Herrera-Larios v. El Chico* 71, 2017 Ark. App. 650, 535 S.W.3d 305 (2017).

When the injured construction worker's complaint in circuit court alleged that the employer failed to provide workers' compensation and the employer failed to appear, the circuit court erred in concluding that it had subject-matter jurisdiction over the worker's complaint; instead, the Workers' Compensation Commission had exclusive, original jurisdiction to determine the facts that established subject-matter jurisdiction. *Stan v. Vences*, 2019 Ark. App. 56, 571 S.W.3d 24 (2019).

Even though no answer was filed, the allegation in the injured worker's com-

plaint that the employer “failed to provide workers’ compensation benefits for his employees” did not establish as a matter of law that he failed to “secure the payment of compensation” under subsection (b) of this section and § 11-9-404; the allegation failed to address whether the employer had a policy of workers’ compensation insurance in effect at the time of the employee’s injury. *Stan v. Vences*, 2019 Ark. App. 56, 571 S.W.3d 24 (2019).

When the injured construction worker’s complaint in circuit court alleged that the employer failed to provide workers’ compensation and the employer failed to appear or file an answer, the employer did not waive the affirmative defense of exclusivity under the Workers’ Compensation Law; a challenge to subject-matter jurisdiction cannot be waived. *Stan v. Vences*, 2019 Ark. App. 56, 571 S.W.3d 24 (2019).

Immunity.

In employee’s products liability action against the manufacturer of the product that injured him while he was working, the circuit court properly precluded the manufacturer’s attempt to allocate fault to the nonparty employer in its amended answer; because the employer was clothed with immunity from liability in tort under the exclusive-remedy provision of the workers’ compensation statutes, the employer could not have joint or several “liability” in tort and therefore did not meet the definition of “joint tortfeasor” in the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., or fall within the confines of that act. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., does not allow for the apportionment of fault to an immune nonparty employer. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The language of § 16-55-201 is clear; it speaks in terms of the allocation of fault among the “defendants” to the action but is silent as to the allocation of nonparty fault. Instead, the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., addresses the allocation of nonparty fault. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

Indemnity.

When a telephone company worker was injured in an accident involving a delivery

driver, the telephone company was not liable to indemnify the delivery company under an implied indemnity exception to the exclusivity of the Workers’ Compensation Law, because there was no special relationship between the telephone company and the delivery company. The relevant statutes and safety regulations that the telephone company was said to have violated merely created a duty of safety to the public and the telephone company’s employees. *R&L Carriers Shared Servs., LLC v. Markley*, 2017 Ark. App. 240, 520 S.W.3d 268 (2017).

Jurisdiction.

Filing of a workers’ compensation claim did not toll the statute of limitations on a wrongful death suit; the Workers’ Compensation Commission’s primary jurisdiction to determine workers’ compensation coverage did not prevent the tort action from being filed while the workers’ compensation claim was pending. *Frisby v. Milbank Mfg. Co.*, 688 F.3d 540 (8th Cir. 2012).

Company was entitled to a writ of prohibition, because the lung disease and silicosis claim was covered by the Workers’ Compensation Law, and the circuit court lacked jurisdiction to determine whether the claimant’s alleged disease from his exposure at home was covered under the Law; the time of disablement was within three years of his last injurious exposure, and the claimant failed to file his claim within the one-year limitation period. *Porocel Corp. v. Circuit Court of Saline County*, 2013 Ark. 172 (2013).

Workers’ Compensation Commission had exclusive, original jurisdiction to determine the applicability of workers’ compensation laws to an out-of-state employee’s tort claim against a co-employee where the employee had sought relief through the Commission, did not prevail, and then asserted that Arkansas lacked jurisdiction. *Curtis v. Lemna*, 2014 Ark. 377 (2014).

Employer’s petition for writ of prohibition was granted because the Workers’ Compensation Commission, not the circuit court, had exclusive jurisdiction to decide questions of fact regarding the applicability of the Workers’ Compensation Law to the employee’s claims. The employee’s claims of negligent hiring and retention were claims of negligence, not

intentional tort; the question whether the alleged sexual assault arose out of the employment was a factual inquiry; the causal relationship between the alleged physical and mental injuries raised issues of fact relevant to § 11-9-113; and the facts as presented in the complaint could not be determined to fall outside the Workers' Compensation Law as a matter of law. *Truman Arnold Cos. v. Miller County Circuit Court*, 2017 Ark. 94, 513 S.W.3d 838 (2017).

Although an injured worker contended that the worker's request for declaratory judgment fell outside the exclusivity doctrine for workers' compensation claims, because the worker was not seeking monetary damages or compensation, the circuit court lacked jurisdiction to hear the worker's claim; the Declaratory Judgments Act, § 16-111-101 et seq., did not afford the worker an avenue to avoid the Workers' Compensation Commission's primary jurisdiction. *Esterline Techs. Corp. v. Brownlee*, 2021 Ark. 33, 617 S.W.3d 256 (2021).

Third-Party Tortfeasors.

—Co-Workers.

Substantial evidence supported the Workers' Compensation Commission's finding that the employee and co-employee were acting within the scope of their employment at the time of a golf outing accident where both were at the golf course for a sales meeting, which included lunch and the continued discus-

sion and free flow of ideas regarding the employer's business while playing golf and having a team dinner with spouses. *Curtis v. Lemna*, 2014 Ark. 377 (2014).

Workers' Compensation Commission's decision that a co-employee was entitled to immunity under this section for a golf outing accident was supported by substantial evidence where the co-employee drove the golf cart for the employee and the co-employee to participate in the employer's team building golf outing. *Curtis v. Lemna*, 2014 Ark. 377 (2014).

Substantial evidence supported the decision that the driver was immune from suit given judicial precedent affirming immunity to a co-employee when the employee received workers' compensation benefits from the employer. Moreover, there was no definitive testimony that the driver had made a detour to purchase food. *Moore v. Bestway Rent to Own*, 2021 Ark. App. 41, 617 S.W.3d 300 (2021).

Writ of Prohibition.

Trial court lacked jurisdiction to decide the existence of an employer-employee relationship between employers and a deceased worker, for exclusivity purposes, because the Workers' Compensation Commission had exclusive jurisdiction to first decide relevant fact questions, since the facts were not so one-sided as to allow such a determination as a matter of law; thus, the employers were entitled to a writ of prohibition. *Entergy Ark., Inc. v. Pope*, 2014 Ark. 509, 452 S.W.3d 81 (2014).

11-9-106. Penalties for misrepresentation.

(a)(1)(A) Any person or entity who willfully and knowingly makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who willfully and knowingly employs any device, scheme, or artifice for the purpose of obtaining any benefit or payment, defeating or wrongfully increasing or wrongfully decreasing any claim for benefit or payment, or obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium, or who aids and abets for any of said purposes, under this chapter shall be guilty of a Class D felony.

(B) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision (a)(1) or subdivision (a)(2) of this section shall be paid and allocated in accordance with applicable law to the Death and Permanent Total Disability Trust Fund administered by the Workers' Compensation Commission.

(2) It is to be understood that any person or entity with whom any person identified in subdivision (a)(1) of this section has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a Class D felony.

(b) A copy of subdivision (a)(1) of this section shall be placed on all forms prescribed by the Workers' Compensation Commission for the use of injured employees claiming benefits and for the use of employers in responding to such employees' claims under this chapter.

(c) Where the Workers' Compensation Commission or the Insurance Commissioner finds that false statements or representations were made willfully and knowingly, that material information was willfully and knowingly omitted or concealed, or that any device, scheme, or artifice was willfully and knowingly employed for the purpose of obtaining benefits or payments, obtaining, wrongfully increasing, wrongfully decreasing, or defeating any claim for benefit or payment, or obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium under this chapter or that any other criminal violations related thereto were committed, the Chair of the Workers' Compensation Commission or the Insurance Commissioner shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction in the matter.

(d)(1)(A)(i) There shall be established within the State Insurance Department a Workers' Compensation Fraud Investigation Unit, funded by the Workers' Compensation Commission, which will be headed and supervised by a director who may also serve as the director of any other designated insurance fraud investigation division within the department, in which event the director's compensation shall be paid solely from the funds of such insurance fraud investigation division.

(ii) The unit is designated as a law enforcement agency.

(B)(i) The unit herein designated will investigate workers' compensation fraud, additional criminal violations that may be related thereto, and any other insurance fraud matters as may be assigned at the discretion of the director.

(ii) The Insurance Commissioner shall designate the personnel assigned to the unit, who shall conduct investigations under this subdivision (d)(1)(B).

(iii) A person designated and employed as an investigator by the unit shall:

(a) Be a certified law enforcement officer under § 12-9-101 et seq.; and

(b) Have statewide law enforcement jurisdiction and authority.

(iv) Personnel hired as law enforcement officers shall be state-certified law enforcement or the equivalent in national or military law enforcement experience as approved by the Arkansas Commission on Law Enforcement Standards and Training.

(2) The Insurance Commissioner and his or her deputies and assistants and the fraud director and his or her deputies and assistants shall

be vested with the power of enforcing this section and rendering more effective the disclosure and apprehension of persons or entities who abuse the workers' compensation system as established by the General Assembly by making false or misleading statements for the purpose of either obtaining, wrongfully increasing, wrongfully decreasing or defeating the payment of benefits, obtaining or avoiding workers' compensation coverage, or avoiding payment of the proper insurance premium.

(3) It shall be the duty of the unit to assist the Insurance Commissioner and the department in the performance of their duties, and, further, to determine the identity of carriers, employers, or employees who within the State of Arkansas have violated subsection (a) of this section and report the violation to the Workers' Compensation Commission and to the Insurance Commissioner, who shall, in turn, be responsible for reporting the violation to the prosecuting attorney having criminal jurisdiction in the matter.

(4)(A) With respect to the subject of any investigation being conducted by the unit, the Insurance Commissioner and his or her deputies and assistants and the fraud director and his or her deputies and assistants shall have the power of subpoena and may:

(i) Subpoena witnesses;

(ii) Administer oaths or affirmations and examine any individual under oath; and

(iii) Require and compel the production of records, books, papers, contracts, and other documents.

(B) Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court.

(C)(i) If any individual fails to obey a subpoena issued and served pursuant to this section with respect to any matter concerning which he or she may be lawfully interrogated, then upon application of the commissioner or fraud director, the Pulaski County Circuit Court or the circuit court of the county where the subpoena was served may issue an order requiring the individual to comply with the subpoena and to testify.

(ii) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(D) If any person has refused in connection with an investigation by the fraud director to be examined under oath concerning his or her affairs, then the fraud director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.

(E) Any person testifying falsely under oath or affirmation in this state as to any matter material to any investigation or hearing conducted pursuant to this subdivision (d)(4), or any workers' compensation hearing, shall upon conviction be guilty of perjury and punished accordingly.

(5) Fees and mileage of the officers serving the subpoenas and of the witnesses in answer to subpoenas shall be as provided by law.

(6)(A) Every carrier or employer who has reason to suspect that a violation of subdivision (a)(1) of this section has occurred shall be required to report all pertinent matters relating thereto to the unit.

(B) No such carrier shall be liable to any employer or employee for any such report, and no employer shall be liable to any employee for such a report unless it knowingly and intentionally includes false information.

(C)(i) Any such carrier or employer who willfully and knowingly fails to report any such violation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed one (1) year or by both fine and imprisonment.

(ii) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision (d)(6)(C) shall be paid and allocated in accordance with applicable law to the fund administered by the commission.

(D) Although not mandated to report suspected violations of subdivision (a)(1) of this section by an employer or employee, any employee who does make such a report shall not be liable to the employer or employee whose suspected violations he or she has reported.

(E) In addition, any immunity from liability provisions of the Arkansas Insurance Code, § 23-60-101 et seq., applicable to the reporting of suspected fraudulent insurance acts shall also be applicable to the reporting of information under this subdivision (d)(6).

(e)(1) For the purpose of imposing criminal sanctions or a fine for violation of the duties of this chapter, the prosecuting attorney shall have the right and discretion to proceed against any person or organization responsible for such violations, both organizational and individual liability being intended by this chapter.

(2) The prosecuting attorney of the district to whom a suspected violation of subsection (a) of this section, § 11-9-402(c), § 11-9-406, or any other criminal violations that may be related thereto, has been referred shall, for the purpose of assisting him or her in such prosecutions, have the authority to appoint as special deputy prosecuting attorneys licensed attorneys at law in the employment of the unit or any other designated insurance fraud investigation division within the department. Such special deputy prosecuting attorneys shall, for the purpose of the prosecutions to which they are assigned, be responsible to and report to the prosecuting attorney.

(f) Notwithstanding any other provision of law, it is the specific intent of this section that active investigatory files as maintained by the department and by the unit be deemed confidential and privileged and not be made open to the public until the matter under investigation is closed by the fraud director with the consent of the Insurance Commissioner, except that such active investigatory files shall also be subject to

any confidentiality provisions of the Arkansas Insurance Code, § 23-60-101 et seq., that are applicable to the investigation of fraudulent insurance acts.

(g) The Insurance Commissioner, with the cooperation and assistance of the Workers' Compensation Commission, is authorized to establish rules as may be necessary to carry out the provisions of this section.

(h) Nothing in this section shall be deemed to create a civil cause of action.

History. Init. Meas. 1948, No. 4, § 35, Acts 1949, p. 1420; Init. Meas. 1968, No. 1, § 6; Acts 1975 (Extended Sess., 1976), No. 1227, § 17; 1979, No. 253, § 9; A.S.A. 1947, § 81-1335; reen. Acts 1987, No. 1015, § 17; Acts 1993, No. 796, § 5; 1997,

No. 808, §§ 1-13; 1999, No. 881, § 1; 2001, No. 743, § 1; 2013, No. 984, § 1; 2019, No. 315, § 775.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (g).

CASE NOTES

Cited: *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-107. Penalties for discrimination for filing claim.

CASE NOTES

Common-law Remedies for Retaliation.

By enacting § 16-118-107, the Arkansas General Assembly did not intend to revive the individual cause of action for

common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at this section. *Lambert v. LQ Mgmt., L.L.C.*, 2013 Ark. 114, 426 S.W.3d 437 (2013).

11-9-108. Waiver of compensation void — Exception.

CASE NOTES

Application.

Appellant partially relied on subsection (a) of this section, but her reliance was misplaced; it is true that the terms of a contract, by themselves, cannot convert an employee into an independent contractor if the other surrounding facts do not support that conclusion, but in this case, the Workers' Compensation Commission

found that the facts supported appellee's position that appellant was acting as an independent contractor, not an employee, and the court could not say that others could not have reached the same conclusion, such that the court affirmed the denial of benefits. *Long v. Superior Senior Care, Inc.*, 2013 Ark. App. 204, 427 S.W.3d 106 (2013).

11-9-110. Compensation nonassignable, etc., and payable to dependents only — Child support obligations excepted — Definition.

(a) The right to compensation shall not be assignable and shall not be subject to garnishment, attachment, levy, execution, or any other

legal process, except for child support obligations and moneys retained by the Division of Correction under § 12-30-406(a)(1).

(b) Money compensation to dependents of a deceased employee shall not constitute assets of the estate of the deceased employee and shall be payable to and for the benefit of the dependents alone.

(c)(1) On or after June 30, 1993, the Workers' Compensation Commission shall forward monthly a computer tape listing the name, address, and Social Security number, if available, on all persons for whom the commission has established a file during the preceding month to the Office of Child Support Enforcement. The computer tape shall also include the name of the workers' compensation carrier and the name of the employer.

(2) The same information shall be provided to individuals who apply for the information with the commission on an individual employee to an individual certifying that they have an interest in the child support obligations of the employee on whom the information is requested.

(d)(1) Amounts withheld from weekly compensation benefits for child support obligations shall not exceed twenty-five percent (25%) of the benefit amount.

(2) Amounts withheld from a lump-sum settlement on a joint petition for child support obligations shall not exceed fifty percent (50%) of the settlement amount.

(e) Any amount withheld under subsection (d) of this section shall be paid through the appropriate court payable to the person or agency to whom the obligation is payable.

(f) Any amount withheld pursuant to the provisions of this section shall for all purposes be treated as if it were paid to the employee as workers' compensation and paid by the employee to the person or agency to whom the obligation is payable.

(g) For purposes of this section, "child support obligations" is defined as only those support obligations that are contained in a decree or order of the circuit court which provides for the payment of money for the support and care of any child or children.

History. Init. Meas. 1948, No. 4, § 21, Acts 1949, p. 1420; A.S.A. 1947, § 81-1321; Acts 1987, No. 524, § 2; 1995, No. 1184, §§ 21, 28; 2001, No. 1651, § 1; 2019, No. 910, § 696.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a).

CASE NOTES

Tuition Payments.

Trial court lacked jurisdiction to modify payments for parochial school education because the parties' agreement on that subject was an independent contract separate from child support; tuition payments in this case did not "support" or "care" for the children where they were in addition

to a support payment, and there was no deviation based on the tuition. An independent property-settlement agreement, if approved by a court and incorporated into a divorce decree, cannot be subsequently modified by the court. *Fischer v. Fischer*, 2015 Ark. App. 116, 456 S.W.3d 779 (2015).

11-9-113. Mental injury or illness.**CASE NOTES****ANALYSIS**

Evidence.
Jurisdiction.

Evidence.

Substantial evidence was lacking to support the Workers' Compensation Commission's finding of a compensable mental injury under this section, as there was no medical opinion offered to show that a meat cutter's mental condition was caused by his physical injury. *Kroger Ltd. P'ship v. Fee*, 2014 Ark. App. 577, 446 S.W.3d 628 (2014).

Workers' Compensation Commission erred in denying an employee's request for psychological treatment because there was evidence in the record that a licensed counselor and a neurologist diagnosed the employee with a psychological disorder after she sustained an admittedly compensable injury to her head during the course and scope of her employment, and that diagnosis had been reviewed and approved by both a licensed psychiatrist and a psychologist. *Kuakahela v. Rose Aircraft Servs.*, 2015 Ark. App. 350, 465 S.W.3d 1 (2015).

Workers' Compensation Commission's ruling that a claimant suffered from a major depressive order was reversed where the licensed psychologist's medical evidence established, at best, only four of the five symptoms found by the Commission, there was no time frame to indicate that the claimant's symptoms occurred within the same two-week period or with the frequency required, and thus, the sup-

porting medical evidence did not meet the established criteria for depression in accordance with the Diagnostic and Statistical Manual of Mental Disorders. *Lincoln Pub. Schools v. Secrist*, 2016 Ark. App. 315, 496 S.W.3d 396 (2016).

Jurisdiction.

Supreme Court of Arkansas did not need to decide whether sexual assault is a crime of violence under this section as a matter of law, because a factual inquiry existed regarding whether the employee's alleged mental injuries were derived from any physical injuries and whether a crime of violence occurred. *Truman Arnold Cos. v. Miller County Circuit Court*, 2017 Ark. 94, 513 S.W.3d 838 (2017).

Employer's petition for writ of prohibition was granted because the Workers' Compensation Commission, not the circuit court, had exclusive jurisdiction to decide questions of fact regarding the applicability of the Workers' Compensation Law to the employee's claims. The employee's claims of negligent hiring and retention were claims of negligence, not intentional tort; the question whether the alleged sexual assault arose out of the employment was a factual inquiry; the causal relationship between the alleged physical and mental injuries raised issues of fact relevant to subsection (a) of this section; and the facts as presented in the complaint could not be determined to fall outside the Workers' Compensation Law as a matter of law. *Truman Arnold Cos. v. Miller County Circuit Court*, 2017 Ark. 94, 513 S.W.3d 838 (2017).

11-9-114. Heart or lung injury or illness.**CASE NOTES****ANALYSIS**

Accident as Cause Shown.
Evidence.

Accident as Cause Shown.

There was substantial evidence to support the denial by an administrative law

judge and the Workers' Compensation Commission of an employee's claim pursuant to this section, as the employee did not prove by a preponderance of the evidence that he suffered a compensable heart attack while working for the employer; there was no evidence to show what caused the type of plaque rupture

that he suffered. *Kimble v. Hino Motors Mfg. United States, Inc.*, 2012 Ark. App. 646 (2012).

Evidence.

Substantial evidence existed to support the Workers' Compensation Commission's finding that a claimant failed to prove a compensable injury. Conflicting medical

testimony was for the Commission to resolve, and reasonable minds could determine that the claimant suffered a cardiac arrest for reasons other than work-related heat exhaustion. *Robbins v. Hilark Indus.*, 2017 Ark. App. 431, 526 S.W.3d 895 (2017).

11-9-115. Disclosure of child support obligations.

RESEARCH REFERENCES

ALR. Status as Alter Ego of Employer for Purposes of Exclusive Remedy Rule Barring Third-Party Action Under Workers' Compensation Statutes. 27 A.L.R.7th Art. 2 (2018).

11-9-118. Provider payments while claims are pending.

(a) No hospital, physician, or other healthcare provider shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit reporting agency any failure of the employee to make the payment, when a claim for compensation has been filed under this chapter and the hospital, physician, or healthcare provider has received actual notice given in writing by the employee or the employee's representative. Actual notice shall be deemed received by the hospital, physician, or healthcare provider five (5) days after mailing by certified mail by the employee or his or her representative to the hospital, physician, or healthcare provider.

(b) The notice shall include:

- (1) The name of the employer;
- (2) The name of the insurer, if known;
- (3) The name of the employee receiving the services;
- (4) The general nature of the injury, if known; and
- (5) Where a claim has been filed, the claim number, if known.

(c) When an injury or bill is found to be noncompensable under this chapter, the hospital, physician, or other healthcare provider shall be entitled to pursue the employee for any unpaid portion of the fee or other charges for authorized services provided to the employee. Any applicable statute of limitations for an action for the fees or other charges shall be tolled from the time notice is given to the hospital, physician, or other healthcare provider until a determination of noncompensability in regard to the injury which is the basis of the services is made, or in the event that there is an appeal to the Workers' Compensation Commission, the Court of Appeals, or the Supreme Court, until a final determination of noncompensability is rendered and all appeal deadlines have passed.

(d) This section shall not avoid, modify, or amend any other section or subsection of this chapter, including, but not limited to, the prohibition

against balance billing contained in § 11-9-508(d)(3) and any rules adopted thereunder.

(e) An order by the commission pursuant to this section shall stay all proceedings for collection.

History. Acts 2001, No. 1281, § 3; deleted “and regulations” following “rules” 2019, No. 315, § 776. in (d).

Amendments. The 2019 amendment

SUBCHAPTER 2 — WORKERS' COMPENSATION COMMISSION

SECTION.

- 11-9-205. Administration of chapter — Staff and expenditures.
- 11-9-207. Powers and duties.
- 11-9-209. Statistical data collection.

SECTION.

- 11-9-210. Purchase of annuity contracts — Funding of Death and Permanent Total Disability Trust Fund obligations.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

11-9-205. Administration of chapter — Staff and expenditures.

(a)(1) For the purpose of administering the provisions of this chapter, the Workers’ Compensation Commission is authorized:

(A) To make such rules as may be found necessary;

(B) To appoint and fix the compensation of temporary technical assistants and medical and legal advisers and to appoint and to fix the compensation of clerical assistants and other officers and employees; and

(C) To make such expenditures, including those for personal service, rent, books, periodicals, office equipment, and supplies, and for printing and binding as may be necessary.

(2)(A) Prior to the adoption, prescription, amendment, modification, or repeal of any rule or form, the commission shall give at least forty-five (45) days’ notice of its intended action.

(B) The notice shall include a statement of the terms or substance of the intended action or description of the subjects and issues involved, and the time, place, and manner in which interested persons may present their views thereon.

(C) The notice shall be mailed to any person specified by law or who shall have requested advance notice of rulemaking proceedings.

(3) The commission shall afford all interested persons a reasonable opportunity to submit written data, views, or arguments, and, if the commission in its discretion shall so direct, oral testimony or argument.

(4) Each rule or form adopted by the commission shall be effective twenty (20) days after adoption unless a later date is specified by law or in the rule itself.

(5) All expenditures of the commission in the administration of this chapter shall be allowed and paid from the Workers' Compensation Fund upon the presentation of itemized vouchers approved by the commission.

(b)(1) The commission may appoint as many persons as may be necessary to be administrative law judges and in addition may appoint such examiners, rate experts, investigators, medical examiners, clerks, and other employees as it deems necessary to effectuate the provisions of this chapter, provided that the appointment of all rate experts shall be made by the Secretary of the Department of Labor and Licensing, whose duty it is to approve the rates charged.

(2) Rate experts shall be considered employees of the commission and the Department of Labor and Licensing and shall be paid from the Workers' Compensation Fund.

(3) Employees appointed pursuant to this subsection shall receive an annual salary to be fixed by the commission within the appropriation made therefor.

(c) It shall be the duty of an administrative law judge, under the rules adopted by the commission, to hear and determine claims for compensation and to conduct hearings and investigations and to make such orders, decisions, and determinations as may be required by any rule or order of the commission.

History. Init. Meas. 1948, No. 4, §§ 42, 44, Acts 1949, p. 1420; 1975, No. 655, § 1; 1986 (2nd Ex. Sess.), No. 10, § 13; A.S.A. 1947, §§ 81-1342, 81-1344; Acts 2019, No. 315, §§ 777-779; 2019, No. 910, § 5357.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1)(A); deleted "regulation" following "rule" in (a)(2)(A); and

deleted "regulation" following "Each rule" in (a)(4).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Labor and Licensing" for "Insurance Commissioner" in (b)(1); and substituted "Department of Labor and Licensing" for "Insurance Commissioner" in (b)(2).

11-9-207. Powers and duties.

(a) In addition to its other duties and powers, the Workers' Compensation Commission is given and granted full power and authority:

(1) To hear and determine all claims for compensation, including claims based upon injuries which occurred outside the State of Arkansas for which compensation is payable under this chapter;

(2) To require and order medical services for and examinations of injured employees and to employ special medical examiners and advi-

sors who shall be paid not to exceed twenty-five dollars (\$25.00) per day and reasonable traveling expenses;

(3) To approve claims for medical services and attorney's fees;

(4) To excuse failure to give notice either of injury or death of any employee;

(5) To approve agreements, make, modify, or rescind awards, and make and enter findings of fact and rulings of law;

(6) To enter orders in appealed cases;

(7) To determine the time for the payment of compensation and order the reimbursement of employers for amounts advanced;

(8) To assess penalties;

(9) To prescribe rules governing the representation of employees, employers, and carriers in respect to claims before the commission;

(10) To issue subpoenas, administer oaths, and take testimony, by deposition or otherwise;

(11) To make surveys and to determine the existence and prevalence of occupational disease hazards within this state, to determine the measures necessary to eliminate or reduce these hazards, and to add to the schedule of occupational diseases subject to appropriate conditions and after public hearing;

(12) To make available all records in connection with all cases of personal injury to the Secretary of the Department of Labor and Licensing. The secretary may propose rules for the prevention of injuries and transmit the rules to the commission. The commission may recommend proposed rules for prevention of injuries to the secretary;

(13) To have and exercise all other powers and duties conferred or imposed by this chapter; and

(14) To transfer the excess of income over expenses from the commission's annual educational conference to Kids' Chance of Arkansas, Inc., a nonprofit charitable organization designed to provide scholarships to children of workers who have been killed or become permanently and totally disabled from a compensable injury, including any accumulation from prior years' conferences.

(b)(1) In addition to the other powers and duties granted to the commission in this section and otherwise provided by law, the commission is authorized to establish and impose reasonable fees to recover the cost of preparation of various informative materials distributed by the commission.

(2) The fees shall be established by rule of the commission.

(3) Funds derived from fees shall be deposited into the Workers' Compensation Fund to be used to defray expenses incurred in preparation and distribution of materials.

History. Init. Meas. 1948, No. 4, § 43, Acts 1949, p. 1420; Acts 1981, No. 630, § 1; A.S.A. 1947, §§ 81-1343, 81-1343.1; Acts 2001, No. 1757, § 3; 2019, No. 315, §§ 780, 781; 2019, No. 910, § 5358.

Amendments. The 2019 amendment

by No. 315 deleted "and regulations" following "rules" in (a)(9); and substituted "rule" for "regulation" in (b)(2).

The 2019 amendment by No. 910, in (a)(12), substituted "Secretary of the Department of Labor and Licensing" for "Di-

rector of the Department of Labor" and substituted "secretary" for "director" twice.

CASE NOTES

Findings.

Merits of an issue relating to an authorized treating physician were not considered because the issue was not raised or ruled on below. The Workers' Compensation Commission made no finding on

whether appellants were responsible for paying for the treatment under the change-of-physician provisions in § 11-9-514. Ark. Dep't of Parks & Tourism v. Price, 2016 Ark. App. 109 (2016).

11-9-209. Statistical data collection.

(a) The Workers' Compensation Commission shall publish annually, on an aggregate basis, information pertaining to the distribution of workers' compensation insurance premiums, losses, expenses, and net income to be compiled from reports required to be filed with the Secretary of the Department of Labor and Licensing pursuant to § 23-63-216, as amended, or any similar information required to be filed by the secretary regarding workers' compensation insurance.

(b) The commission shall also publish in that same annual report information regarding aggregate workers' compensation benefit distribution to claimants, medical providers, and attorneys if that specific information or similar information becomes available from revised or additional reporting requirements that may be required by the secretary.

History. Acts 1991, No. 1060, § 7; 2019, No. 910, § 5359.

Amendments. The 2019 amendment, in (a), substituted "Secretary of the Department of Labor and Licensing" for the first occurrence of "Insurance Commissioner" and substituted "secretary" for the second occurrence of "Insurance Commissioner"; and substituted "secretary" for "Insurance Commissioner" in (b).

11-9-210. Purchase of annuity contracts — Funding of Death and Permanent Total Disability Trust Fund obligations.

(a)(1) The Workers' Compensation Commission is hereby authorized to fund financial obligations of the Death and Permanent Total Disability Trust Fund through the purchase of structured annuity contracts. Provided, the commission shall purchase such annuity contracts only when the commission determines that it is financially advantageous to the trust fund involved.

(2) Structured annuity contracts shall be purchased only from insurance companies:

(A) Licensed to do business in Arkansas and authorized to write annuities as regulated by the State Insurance Department;

(B) Experienced in the business of writing and administering structured annuities;

(C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and

(D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

(3) Structured annuity contracts purchased by the commission shall:

(A) Include a separate contract for each claimant or beneficiary covered;

(B) Require that the payments to the claimant or beneficiary be sent to the commission so that it can maintain administrative control over the payments, and the commission will distribute the payments in full to the claimants or beneficiaries; and

(C) Provide for return of principal to the appropriate fund in the event that the obligations of the Death and Permanent Total Disability Trust Fund to any claimant or beneficiary cease prior to the end of the period certain guarantee in the contract.

(b) The commission shall adopt such appropriate rules consistent with the provisions of this section, § 23-96-104(16) and (25), and § 23-96-114(f) and (g) as it deems necessary to enable it to efficiently and effectively administer the provisions of this section, § 23-96-104(16) and (25), and § 23-96-114(f) and (g) and any structured annuity arrangement it may enter into pursuant to the authority granted herein.

History. Acts 1991, No. 651, §§ 1, 3; 2019, No. 315, § 782; 2019, No. 382, § 2.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 382 substituted "§ 23-96-104(16) and (25), and § 23-96-114(f) and (g)" for "§§ 23-96-104O(2) and X(2) and 23-96-114F and G" twice in (b).

SUBCHAPTER 3 — FUNDS — TAXES AND FEES

SECTION.

11-9-303. Payment of tax by carrier — Definition.

11-9-304. Payment of tax by self-insurer.

11-9-305. Payment of tax by public employer.

SECTION.

11-9-306. Determination of surplus and rate of taxation.

11-9-303. Payment of tax by carrier — Definition.

(a)(1) In addition to the premium taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a tax, at the rate to be determined as provided in § 11-9-306 but not to exceed three percent (3%), on all written manual premiums resulting from the writing of workers' compensation insurance on risks within the state.

(2) Upon the final payment of the liabilities of the Death and Permanent Total Disability Trust Fund under § 11-9-502, the tax rate under this section shall not exceed one and five-tenths percent (1.5%).

(b) "Written manual premium" means premium produced in a given year by the manual rates in effect during the experience period and

shall exclude the premium produced by the expense constant. Furthermore, "written manual premium", for the purpose of this chapter, means premium before any allowable deviated discounts, any experience rating modification, any premium discount, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount.

(c)(1) This tax shall be collected by the commission from the carriers at the same time and in the same manner as insurance premium taxes under § 26-57-601 et seq. and deposited into the funds created in § 11-9-301.

(2) This transfer from the funds created in § 11-9-301 shall be in the same proportions that deposits were made into the three (3) funds as set forth in § 11-9-306(a)-(c).

(d)(1) Assessments upon which premium taxes are based shall be made on forms prescribed by the commission and shall be paid to the commission.

(2) Absent a waiver obtained from the commission for good cause, the failure of the licensed carrier to pay the assessment when due shall be referred to the Insurance Commissioner for appropriate administrative action against the Arkansas certificate of authority of the delinquent insurer.

(e) Premium tax payments shall be made by check payable to the commission.

History. Init. Meas. 1948, No. 4, § 47, Acts 1949, p. 1420; Acts 1979, No. 253, § 10; 1983, No. 393, § 1; A.S.A. 1947, § 81-1348; Acts 1989 (3rd Ex. Sess.), No. 22, § 3; 1993, No. 652, § 14; 2001, No. 1757, § 5; 2005, No. 505, § 1; 2016 (3rd

Ex. Sess.), No. 4, § 1; 2016 (3rd Ex. Sess.), No. 5, § 1.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 4 and 5 added (a)(2).

11-9-304. Payment of tax by self-insurer.

(a)(1) The Workers' Compensation Commission shall collect a tax from every self-insured employer at a rate to be determined as provided by § 11-9-306 but not to exceed three percent (3%) of the written manual premium which would have to be paid under § 11-9-303 by a carrier if the self-insured employer were insured by a carrier.

(2) Upon the final payment of the liabilities of the Death and Permanent Total Disability Trust Fund pursuant to § 11-9-502, the tax rate under this section shall not exceed one and five-tenths percent (1.5%).

(b) If the tax provided for under this section is not paid within thirty (30) days of the date provided in § 11-9-306, there shall be assessed a penalty for each thirty (30) days the amount so assessed remains unpaid which is equal to ten percent (10%) of the unpaid amounts and which shall be collected at the same time as a part of the tax assessed.

History. Init. Meas. 1948, No. 4, § 47, Acts 1949, p. 1420; Acts 1979, No. 253, § 10; 1983, No. 393, § 1; A.S.A. 1947, § 81-1348; Acts 2016 (3rd Ex. Sess.), No. 4, § 2; 2016 (3rd Ex. Sess.), No. 5, § 2.

Amendments. The 2016 (3rd Ex. Sess.)

amendment by identical acts Nos. 4 and 5 added (a)(2); and substituted "The Workers' Compensation Commission shall" for "It shall be the duty of the Workers' Compensation Commission to" in (a)(1).

11-9-305. Payment of tax by public employer.

(a)(1)(A) The Workers' Compensation Commission shall collect a tax from every public employer providing workers' compensation coverage to its employees at a rate to be determined as provided by § 11-9-306 but not to exceed three percent (3%) of the written manual premium which an insurance carrier would have to pay under § 11-9-303 if the public employer were insured by a carrier.

(B) Upon the final payment of the liabilities of the Death and Permanent Total Disability Trust Fund under § 11-9-502, the tax rate under this section shall not exceed one and five-tenths percent (1.5%).

(2)(A) The commission shall tabulate and collect the tax to be collected from entities whose workers' compensation claims are administered by the Public Employee Claims Division.

(B) In tabulating the manual premium, a public employer whose workers' compensation claims are administered by the division shall use the average compensation rate for this state as promulgated by the National Council on Compensation Insurance, Inc. for the tax year in question.

(3) The tax collected shall be deposited in and paid to the commission from the Workers' Compensation Revolving Fund and miscellaneous revolving funds.

(b)(1) In the event that any public employer whose workers' compensation claims are administered by the division fails to cooperate in furnishing information upon which the tax will be computed or fails to pay the tax within thirty (30) days of the date provided in § 11-9-306, the commission shall notify the Director of the Public Employee Claims Division of the failure, and the commission shall decertify the public employer from participation in the state's workers' compensation program.

(2) In the event of decertification, the public employer shall obtain its employer's workers' compensation liability coverage from the private market and shall not be entitled to participate in the state's workers' compensation program for a period of one (1) year thereafter.

(c) The procedure for decertification shall be the same as for the revocation or termination of the self-insurer privilege.

History. Init. Meas. 1948, No. 4, § 47, Acts 1949, p. 1420; Acts 1983, No. 393, § 1; 1985, No. 98, § 10; A.S.A. 1947, § 81-1348; Acts 1989 (3rd Ex. Sess.), No. 22, § 4; 1993, No. 1318, § 12; 2005, No. 505,

§ 2; 2016 (3rd Ex. Sess.), No. 4, § 3; 2016 (3rd Ex. Sess.), No. 5, § 3.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 4 and 5 added (a)(1)(B); and substituted "The

Workers' Compensation Commission Workers' Compensation Commission to
shall" for "It shall be the duty of the in (a)(1)(A).

11-9-306. Determination of surplus and rate of taxation.

(a)(1) The Workers' Compensation Commission, on or before December 31 of each year, shall determine the surplus, if any, in the Workers' Compensation Fund, together with the additional amounts necessary to properly administer this chapter for the ensuing year.

(2) The commission shall determine the rate of taxation for collections for that year on or before March 1 of the following year.

(b)(1) The commission, on or before December 31 of each year, shall determine the surplus, if any, in the Second Injury Trust Fund, together with the additional amounts necessary to properly administer this chapter for the ensuing year.

(2) The commission shall determine the rate of taxation for collections for that year on or before March 1 of the following year.

(c)(1) The commission, on or before December 31 of each year, shall determine the surplus, if any, in the Death and Permanent Total Disability Trust Fund, together with the additional amounts necessary to properly administer this chapter for the ensuing year.

(2) The commission shall determine the rate of taxation for collections for that year on or before March 1 of the following year.

(d)(1) The total rate of taxation for all three (3) funds when added together shall not exceed three percent (3%).

(2) Upon the final payment of the liabilities of the Death and Permanent Total Disability Trust Fund under § 11-9-502, the tax rate under this section shall not exceed one and five-tenths percent (1.5%).

(e)(1) The commission shall notify each insurance carrier of the rate of taxation applicable to each fund for the preceding year, and taxes shall be computed and paid pursuant to the provisions of § 11-9-303(c) on or before April 1 of the following year.

(2) The commission shall notify each self-insured employer subject to the tax of the rate of taxation applicable to each fund for the preceding year, and taxes shall be computed by the commission and paid to each fund by the self-insurer through payments made directly to the commission on or before April 1 of the following year.

(3) The commission shall notify each public employer subject to this tax of the rate of taxation applicable to each fund for the preceding year, and taxes shall be computed by the commission and paid to each respective fund through payments made directly to the commission by the public employer on or before April 1 of the following year.

(f) The commission shall have the authority to promulgate rules for administration of the assessment and tax collection process, including, but not limited to, rules applicable to the funds established in § 11-9-301.

(g) No later than March 30 each year, the commission shall provide the Insurance Commissioner a complete listing of workers' compensation premium tax collections for the preceding calendar year, including

the monetary amount of workers' compensation premium tax paid, by year, by name of workers' compensation carrier, and by National Association of Insurance Commissioners identity number.

History. Init. Meas. 1948, No. 4, § 47, Acts 1949, p. 1420; Acts 1979, No. 253, § 10; 1983, No. 393, § 1; A.S.A. 1947, § 81-1348; Acts 1989 (3rd Ex. Sess.), No. 22, § 5; 2005, No. 505, § 3; 2016 (3rd Ex. Sess.), No. 4, § 4; 2016 (3rd Ex. Sess.), No. 5, § 4; 2019, No. 315, § 783.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 4 and 5 added (d)(2).

The 2019 amendment, in (f), deleted "or regulations" following "promulgate rules" and deleted "and regulations" preceding "applicable".

SUBCHAPTER 4 — EMPLOYER LIABILITY — INSURANCE

SECTION.

- 11-9-404. Security for compensation.
- 11-9-405. Substitution of carrier for employer.
- 11-9-408. Insurance policies.

SECTION.

- 11-9-409. Safety and health loss control consultative services.
- 11-9-412. Motor carrier drivers — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-9-401. Employer's liability for compensation.

CASE NOTES

Cited: Wilhelm v. Parsons, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-404. Security for compensation.

(a) Every employer shall secure the payment of compensation under this chapter:

(1) By insuring and keeping insured the payment of the compensation with any carrier authorized to write workers' compensation insurance;

(2)(A) By furnishing satisfactory proof to the Workers' Compensation Commission of the employer's financial ability to pay compensation

and receiving an authorization from the commission to pay compensation directly.

(B) The commission, as a condition to such authorization, may require the employer, except municipalities, counties, or the State of Arkansas or its political subdivisions, to deposit in a depository designated by the commission either an indemnity bond, irrevocable letter of credit, or securities of any kind and in an amount determined by the commission, subject to such reasonable conditions as the commission may prescribe. The conditions shall include authorization to the commission, in case of default, to sell any securities sufficient to pay compensation awards or to bring suit on the bonds or the letter of credit to procure prompt payment of compensation under this chapter.

(C) Any employer securing compensation in accordance with the provisions of this subdivision (a)(2) shall be known as a self-insurer and shall be classed as a carrier of its own insurance.

(D) A self-insurer may have the privilege of securing those portions of the payment of compensation under this chapter as the self-insurer shall elect by insuring the portions with a company approved by the commission. The liability of the company shall be limited to those features and liabilities of this chapter as are expressly stated, and none other;

(3)(A) The commission, under such rules as it may prescribe, may permit two (2) or more employers engaged in the same type of business activity or pursuit to enter into agreements to pool their liabilities under this section for the purpose of qualifying as self-insurers, and each such approved group shall be classified as an homogeneous self-insurer.

(B)(i) The commission, under such rules as it may prescribe, may permit two (2) or more employers who are members of the same trade or professional association to enter into agreements to pool their liabilities under this section for the purpose of qualifying as self-insurers, and each such approved group shall be classified as a common self-insurer.

(ii) The trade or professional association shall have been in active existence for at least three (3) years; such associations shall have a constitution or bylaws; and all trustees shall be participants in the common self-insurer program, shall have members that support the association by regular payment of dues on an annual, semiannual, quarterly, or monthly basis, and shall be created in good faith for purposes other than that of creating workers' compensation common self-insurer pools.

(iii) No two (2) trade or professional associations shall be allowed to combine or join each other and qualify as a common self-insurer.

(C) In order to qualify as group self-insurers, these groups shall furnish to or satisfy the commission as to the following:

(i) An application on a form prescribed by the commission by an elected board of trustees to establish a self-insurance fund to be administered under the direction of the trustees;

(ii) The application shall be accompanied by:

(a) An indemnity agreement in a form satisfactory to the commission jointly and severally binding the groups and each member of the groups to comply with the provisions of the Workers' Compensation Law, § 11-9-101 et seq.; and

(b) An individual application by each member of the groups applying for coverage in the fund;

(iii) A current, audited financial statement of each member of the groups showing a combined net worth of all members applying for coverage of not less than one million dollars (\$1,000,000), a combined ratio of current assets to current liabilities of not less than one to one (1:1), and working capital of an amount establishing financial ability and liquidity sufficient to pay normal compensation claims promptly;

(iv)(a) That the groups deposit and maintain with the commission acceptable securities or have posted a surety bond issued by a corporate surety authorized to do business in the State of Arkansas, in an amount determined by the commission, but not less than two hundred thousand dollars (\$200,000).

(b) However, this subdivision (a)(3)(C)(iv) shall not be applicable to municipalities, counties, or the State of Arkansas and its political subdivisions;

(v) That there exist ample facilities and competent personnel of good character within the groups, or through an approved service organization, for the groups to service their own programs with respect to underwriting matters, claims and adjusting, industrial safety engineering, accounting, and financial management;

(vi)(a) That the groups maintain excess insurance with an insurance company authorized to do business in this state in an amount acceptable to the commission.

(b) However, this subdivision (a)(3)(C)(vi) shall not be applicable to municipalities, counties, or the State of Arkansas and its political subdivisions; and

(vii)(a) That such financial statements, payroll records, accident experience, and compensation reports and such other reports and statements are filed at such time and in such manner as the commission shall require.

(b) However, any fund which fails or refuses to file the reports within the time limits prescribed by the commission shall be subject to a civil penalty in such amount as the commission may prescribe not to exceed one hundred dollars (\$100) per infraction per day, and the failure or refusal may be considered good cause for revocation or suspension of self-insurance privileges;

(4) Each member of the groups shall file financial reports and statements at such times and in such manner as the commission may require to satisfy itself as to the continued financial stability of the member; and

(5) In order to continue to qualify as a homogeneous self-insurer fund or common self-insurer fund, the groups shall continue to meet the

minimum requirements as set forth in subdivision (a)(3) of this section or as prescribed by the commission.

(b)(1) Except for the initial qualification of the groups, a certified audited financial statement shall not be required of any member of a group either for initial membership or as a condition for continued membership in the group.

(2) However, each financial statement filed with the commission shall be duly certified by the president and treasurer of the member, in the case of a corporation, and by the owner and general partners, respectively, in the case of an individual proprietorship or partnership, to the effect that such financial statement is true and correct to the best of the knowledge and belief of the officer, individual owner, or partner and truly reflects the financial condition of the member.

(c) Any person who knowingly files a false or fraudulent financial statement under the provisions of this chapter shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than five (5) years, or both.

(d) Jurisdiction for the enforcement of the provisions of this chapter or any appeal therefrom shall be in the Pulaski County Circuit Court. The underlying purpose of this chapter is to assure the payment of benefits due employees, and this chapter shall be liberally construed to that end.

(e)(1) The commission may suspend or revoke any authorization to a self-insurer for a good cause shown after a hearing at which the self-insurer shall be entitled to be heard in person or by counsel and to present evidence.

(2) No suspension or revocation shall affect the liability of any self-insurer already incurred.

(f) Authorization to write compensation insurance under this chapter shall be given to a carrier only after the carrier has received a certificate of authority from the Insurance Commissioner to transact the business of workers' compensation insurance in Arkansas and the commission has been notified in writing of the issuance of the certificate of authority.

History. Init. Meas. 1948, No. 4, § 36, Acts 1949, p. 1420; Acts 1979, No. 994, § 1; 1981, No. 72, § 1; A.S.A. 1947, § 81-1336; Acts 1987, No. 806, §§ 1, 2; 1987, No. 980, § 1; 1989, No. 821, § 3; 1993, No.

683, § 1; 1995, No. 825, § 1; 2003, No. 468, § 1; 2019, No. 315, § 784.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(3)(A).

CASE NOTES

Exclusivity.

Even though no answer was filed, the allegation in the injured worker's complaint in circuit court that the employer "failed to provide workers' compensation benefits for his employees" did not estab-

lish as a matter of law that he failed to "secure the payment of compensation" for purposes of this section and the exception to exclusivity under § 11-9-105(b); the allegation failed to address whether the employer had a policy of workers' compen-

sation insurance in effect at the time of the employee's injury. *Stan v. Vences*, 2019 Ark. App. 56, 571 S.W.3d 24 (2019).

Cited: *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-405. Substitution of carrier for employer.

(a) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter with respect to that liability may be facilitated, the Workers' Compensation Commission shall by rule provide for the discharge by the carrier, for the employer, of the obligations and duties of the employer with respect to such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter.

(b) For such purpose:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier;

(2) Jurisdiction over the employer by the commission or by any court under this chapter shall be jurisdiction over the carrier; and

(3) Any requirements by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

History. Init. Meas. 1948, No. 4, § 37, Acts 1949, p. 1420; A.S.A. 1947, § 81-1337; Acts 2019, No. 315, § 785.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a).

CASE NOTES

Cited: *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-406. Failure to secure payment of compensation — Penalty.

CASE NOTES

Cited: *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-407. Posting notice of compliance.

CASE NOTES

Burden of Proof.

Workers' compensation claim was not time-barred even though it was filed more than two years after the date of the injury where the employer had told the employee he did not have workers' compensation

insurance, the employer had actual notice of the injury on the date of the injury, and the employer's own testimony showed that he failed to post notice that he had subsequently obtained workers' compensation insurance or notify the employee of

the same after the injury. *Graves v. Hopper*, 2018 Ark. App. 193, 547 S.W.3d 448 (2018).

11-9-408. Insurance policies.

(a) **CONTENTS.** Every policy or contract of insurance issued by a carrier to an employer to secure the payment of compensation under this chapter shall contain:

(1)(A) Provisions that identify the insured employer and either identify each covered employee or describe covered employees by class or type of labor performed and the estimated number of employees of each such class or type.

(B) No single policy of workers' compensation insurance may be issued to any group of employers who are unaffiliated with one another in terms of ownership, control, or right to participate in the profits of the affiliated enterprises;

(2) Provisions that insolvency or bankruptcy of the employer or discharge therein shall not relieve the carrier from payment of compensation for compensable injuries sustained by an employee during the term of the policy or contract;

(3)(A) The agreement of the carrier that it will promptly pay to the person entitled to compensation every installment of compensation that may be awarded or agreed upon and that this obligation shall not be affected by any default of the employer or by any default in the giving of any notice required by the policy or otherwise.

(B) The agreement shall be construed to be a direct obligation by the carrier to the person entitled to compensation, enforceable in that person's name; and

(4) Such other provisions as the State Insurance Department allows or requires carriers to include in workers' compensation policies as otherwise provided at the Arkansas Workers' Compensation Insurance Plan, § 23-67-301 et seq.

(b) CANCELLATION.

(1) An employer may cancel coverage with a carrier by giving the carrier at least thirty (30) days' notice, unless a shorter period is permitted under subdivision (b)(1)(B) of this section.

(A) Cancellation of coverage is effective at 12:01 a.m. thirty (30) days after the date the cancellation notice is received by the carrier, unless a later date is specified in the notice to the carrier.

(B)(i) An employer may cancel coverage effective less than thirty (30) days after written notice is received by the carrier where the employer obtains other coverage or becomes a self-insurer.

(ii) A cancellation under this subdivision is effective immediately upon the effective date of the other coverage or upon authorization as a self-insurer.

(2)(A) A notice of cancellation from the carrier shall state the hour and date that cancellation is effective.

(B) A carrier shall not cancel coverage issued to an employer under this chapter prior to the date specified for expiration in the policy or

contract or until at least thirty (30) days have elapsed after a notice of cancellation has been mailed to the Workers' Compensation Commission and to the employer, or until ten (10) days have elapsed after the notice has been mailed to the employer and to the commission if the cancellation is for nonpayment of premium.

(C) However, if the employer procures other insurance within the notice period, the effective date of the new policy shall be the cancellation date of the old policy.

(3) Cancellation of coverage by an employer or a carrier shall in no way limit liability that was incurred under the policy or contract prior to the effective date of cancellation.

(c) COVERAGE.

(1) No policy or contract of insurance shall be issued against liability under this chapter unless the policy or contract covers the entire liability of the employer. Split coverage whereby some employees of an employer are insured by one carrier and other employees are insured by another carrier, or by the Arkansas Workers' Compensation Insurance Plan, § 23-67-301 et seq., or a plan of self-insurance is expressly prohibited except for:

(A) A policy issued in accordance with § 23-92-409 so long as all employees performing services for a client are covered under the same policy, contract, or plan; or

(B) A policy issued covering the liability of an employer or of multiple employers as to specific jobs, ventures, contracts, or undertakings, but only if the policy meets with the reasonable satisfaction and approval of the Insurance Commissioner that the policy is in the best interest of the employers and the employees concerned and does not unduly or improperly affect the continuity of workers' compensation coverage by seriously and negatively affecting other carriers and agents with outstanding policies issued to any of the employers in issue.

(2) As to any questions of liability between the employer and the carrier, the terms of the policy or contract shall govern.

(d) Under such rules as may be adopted by the Insurance Commissioner, and notwithstanding other provisions of this chapter, he or she may certify five (5) or more employers as an insurance group which shall be considered an employer for the purposes of this chapter.

History. Init. Meas. 1948, No. 4, § 38, Acts 1949, p. 1420; Acts 1973, No. 158, § 1; A.S.A. 1947, § 81-1338; Acts 1993, No. 796, § 12; 2003, No. 1750, § 5; 2019, No. 315, § 786.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (d).

CASE NOTES

Cited: Wilhelm v. Parsons, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-409. Safety and health loss control consultative services.**(a) WORKERS' HEALTH AND SAFETY DIVISION.**

(1) The Workers' Compensation Commission shall establish a Workers' Health and Safety Division, hereinafter referred to as the "division".

(2) The division shall collect and serve as a repository for statistical information on workers' health and safety. In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall promote workers' health and safety through educational programs and other innovative programs developed by the division.

(3) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall coordinate or supervise the collection of information relating to job safety.

(4) The Chair of the Workers' Compensation Commission, the Secretary of the Department of Labor and Licensing, and the Insurance Commissioner shall function as an advisory committee to resolve questions regarding duplication of efforts, assignment of new programs, and other matters that need cooperation and coordination.

(5)(A) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material. Specific educational material shall be directed to high-risk industries and jobs and shall specifically address means and methods of avoiding high frequency but preventable workers' injuries. Other educational material shall be directed to business and industry generally and shall specifically address means and methods of avoiding common workers' injuries.

(B) Specific decisions as to what issues and problems should be addressed by such information shall be made by the division in cooperation and with the assistance of the Department of Labor and Licensing and the State Insurance Department and with commission approval after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations.

(C) Such educational materials shall include specific references to the requirements of state laws and rules and federal laws and regulations, to recommendations and practices of business, industry, and trade associations, and, where needed, to recommended work practices based on recommendations made by the division, in cooperation and with the assistance of the Department of Labor and Licensing and the State Insurance Department, for the prevention of injury.

(6) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall cooperate with employers and employees to develop means and methods of educating employees and employers with regard to workplace safety.

(7) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall encourage other entities to develop safety courses, safety plans, and safety programs.

(8) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall certify safe employers to provide peer review safety programs.

(9) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall advise insurance carrier loss control service organizations of hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed or of the identity and types of injuries or occupational diseases for prevention of the same to which loss control services should be directed and shall advise insurance carrier loss control service organizations of safety needs and priorities recommended by the division in cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department.

(b) JOB SAFETY INFORMATION SYSTEM.

(1) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall establish and maintain a job safety information system.

(2)(A) The job safety information system shall include a comprehensive database that incorporates all pertinent information relating to each reported injury.

(B) The identity of the employee is confidential and may not be disclosed as part of the job safety information system.

(3) Employers shall file with the commission such reports as may be necessary. The commission shall promulgate rules and prescribe the form and manner of the reports.

(4) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division is authorized, empowered, and directed to obtain, from any state agency, data and statistics, including those compiled for the purpose of ratemaking.

(5) The division shall consult the Department of Labor and Licensing and any other affected state agencies in the design of data information and retrieval systems that will accomplish the mutual purposes of those agencies and of the division.

(c) EXTRA-HAZARDOUS EMPLOYER PROGRAM.

(1)(A) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall develop a program, including injury frequency, to identify extra-hazardous employers. The term "extra-hazardous employer" includes an employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry, an employer whose experience modifier is identified by the commission as too high, and such other employers as may, following a public hearing, be identified as extra-hazardous.

(B) The division shall notify each identified extra-hazardous employer or the carrier for the employer that the employer has been identified as an extra-hazardous employer.

(2)(A) An employer who receives notification under subdivision (c)(1)(B) of this section must obtain a safety consultation within thirty (30) days from the Department of Labor and Licensing, the employer's insurance carrier, or another professional source approved by the division for that purpose.

(B) The safety consultant shall file a written report with the division and the employer setting out any hazardous conditions or practices identified by the safety consultation.

(3) The employer and the consultant shall formulate a specific accident prevention plan that addresses the hazards identified by the consultant. The employer shall comply with the accident prevention plan.

(4) The division may investigate accidents occurring at the work sites of an employer for whom a plan has been formulated under subdivision (c)(3) of this section, and the division may otherwise monitor the implementation of the accident prevention plan as it finds necessary.

(5)(A) Six (6) months after the formulation of an accident prevention plan prescribed by subdivision (c)(3) of this section, the division shall conduct a follow-up inspection of the employer's premises. The division may require the participation of the safety consultant who performed the initial consultation and formulated the safety plan.

(B) If the division determines that the employer has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the division shall so certify.

(C) An employer who the division determines has failed or refused to implement the accident prevention plan or other suitable hazard abatement measures is subject to civil penalties as follows:

(i) The commission may assess a civil penalty against an employer who fails or refuses to implement the accident prevention plan or other suitable hazard abatement procedures in an amount up to one

thousand dollars (\$1,000) per day of violation payable to the Death and Permanent Total Disability Trust Fund; and

(ii) Furthermore, the commission may petition the Pulaski County Circuit Court, or of the county where the business is located, for an order enjoining the employer from engaging in further employment until such time as the employer implements the prevention plan or abatement measure described above or makes payment of all civil penalties.

(6) If, at the time of the inspection required under subdivision (c)(5)(A) of this section, the employer continues to exceed the injury frequencies that may reasonably be expected in that employer's business or industry, the division shall continue to monitor the safety conditions at the work site and may formulate additional safety plans reasonably calculated to abate hazards. The employer shall comply with the plans and may be subject to additional penalties for failure to implement the plan or plans.

(7) An employer may request a hearing before the full commission to contest findings made by the division under this section.

(8) The identification as an extra-hazardous employer under this section is not admissible in any judicial proceeding unless the commission has determined that the employer is not in compliance with this section and unless that determination has not been reversed or superseded at the time of the event giving rise to the judicial proceeding.

(d) ACCIDENT PREVENTION SERVICES.

(1) Any insurance company licensed to provide casualty insurance in the State of Arkansas and desiring to write workers' compensation insurance in Arkansas shall maintain or provide accident prevention services as a prerequisite to write workers' compensation insurance. The services shall be adequate to furnish accident prevention programs required by the nature of its policyholders' operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services to implement the program of accident prevention services.

(2) Notice that services are available to the policyholder from the insurance company must appear in no less than ten-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state.

(3) At least once each year, each insurance company writing workers' compensation insurance in Arkansas must submit to the division detailed information on the type of accident prevention services offered to that insurance company's policyholders. The information must include any additional information required by the commission.

(4) In cooperation with and with the assistance of the Department of Labor and Licensing and the State Insurance Department, the division shall conduct inspections to determine the adequacy of the accident prevention services required by subdivision (d)(1) of this section at least every two (2) years for each insurance company writing workers' compensation insurance in Arkansas.

(5) If the insurance company does not maintain or provide the accident prevention services required by this subsection or if the insurance company does not use the services in a reasonable manner to prevent injury to employees of its policyholders, the insurance company may be subjected to the same civil penalties as are assessable and enforceable against employers as set forth above in subdivision (c)(5)(C) of this section and shall be subject to suspension or revocation of license to do business in this state by the Insurance Commissioner.

(6) The commission shall employ the qualified personnel necessary to enforce this section.

(e) IMMUNITY FROM CERTAIN LIABILITY.

(1) Except as provided in subdivision (d)(5) of this section, the insurance company, the agent, servant, or employee of the insurance company or self-insured employer, or a safety consultant who performs a safety consultation under this section shall have no liability with respect to any accident based on the allegation that the accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company or self-insured employer for the prevention of accidents in connection with operations of the employer.

(2) Provided, however, this immunity shall not affect the liability of the insurance carrier or self-insured employer for compensation or as otherwise provided in this chapter.

(f) EXCLUSIVE REMEDY. This section does not create an independent cause of action at law or in equity.

History. Acts 1993, No. 796, § 13; 2005, No. 505, § 4; 2019, No. 315, § 787; 2019, No. 910, 5360-5365.

Amendments. The 2019 amendment by No. 315 inserted “laws and rules” in (a)(5)(C).

The 2019 amendment by No. 910 substituted “Department of Labor and Licensing” for “Department of Labor” throughout the section; and substituted “Secretary” for “Director” in (a)(4).

11-9-410. Third-party liability.

CASE NOTES

Recovery Based on Settlement.

Trial court erred in finding that the Public Employee Claims Division (PECD), which had paid workers' compensation to the employee, was only entitled to two-thirds of the deposited funds instead of the net proceeds recovered in the settlement of the employee's negligence action against a third party; the record contained no reference to an agreement by which

PECD agreed to limit its recovery to a portion of the deposited funds, and there was no reason on the record before the appellate court that PECD's recovery should be limited to an amount calculated from the deposited sum as opposed to the entire settlement as provided in this section. *Public Empl. Claims Div. v. Clark*, 2018 Ark. App. 215 (2018).

11-9-411. Effect of payment by other insurers.**CASE NOTES****ANALYSIS**

Construction.

Employer's Setoff.

Construction.

When the claimant did not receive any of the additional workers' compensation benefits awarded because of the offset required by this section of his disability retirement compensation, § 11-9-715 required the employer to pay the injured worker's one-half portion of the attorney's fees due from the workers' compensation benefits awarded. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

The General Assembly intended the attorney's fees awarded under § 11-9-715 to have priority over the offset provided for in this section. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

Plain language of § 11-9-715(a)(2)(B)(i) provides that the attorney's fees awarded will be paid one-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them. The employee's half comes from the payable amount owed to the employee before any offset. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

Employer's Setoff.

Workers' compensation award to an employee who sustained a compensable injury and later received disability-retirement benefits through his retirement plan, part of which he had paid for out of his wages, was subject to an offset based on the extent of the employer's contributions to the disability policy under this section. *Brigman v. City of West Memphis*, 2013 Ark. App. 66 (2013).

Workers' Compensation Commission correctly determined that, pursuant to this section, the employer was entitled to a setoff in an amount equal to the disability insurance benefits paid to the employee where the employee had suffered only one period of disability, and he had received the disability benefits for a portion of the same period as his workers' compensation disability. *Lewis v. Calfrac Well Servs. Corp.*, 2015 Ark. App. 141, 457 S.W.3d 313 (2015).

Workers' Compensation Commission properly determined that the city was entitled to an offset for wage-loss benefits from the Arkansas Local Police and Fire Retirement System where subsection (a) of this section did not limit the type of benefits for which an offset was available, other than via an inapplicable exception, and the Legislature had not amended the statute in light of previous case law allowing such offsets. *Bowmaster v. City of Jacksonville*, 2016 Ark. App. 572, 507 S.W.3d 526 (2016).

11-9-412. Motor carrier drivers — Definitions.

(a) As used in this section:

(1) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property;

(2) "Driver" means a person, including but not limited to a member of a team, who operates a commercial motor vehicle;

(3) "Motor carrier" means a person, partnership, corporation, or limited liability company that provides truck transportation; and

(4) "Owner-operator" means a person, partnership, corporation, or limited liability company that owns or holds under a bona fide lease a commercial motor vehicle that is provided to a motor carrier.

(b)(1) Notwithstanding any other law, an owner-operator that provides a commercial motor vehicle and the services of one (1) or more drivers to a motor carrier under a written contract, and each driver so provided, is not an employee of the motor carrier but is an independent contractor of the motor carrier.

(2) The motor carrier shall not be liable for any compensation required by this chapter to the owner-operator, its employees, or subcontractors.

(3) An owner-operator that is under exclusive contract to the motor carrier may elect to secure coverage for the owner-operator and for one (1) or more drivers of the owner-operator through a workers' compensation insurance policy or authorized self-insurance plan that insures the motor carrier if:

(A) The election by the owner-operator is made in writing as part of a written contract between the owner-operator and the motor carrier; and

(B) The owner-operator pays the premiums as requested by the motor carrier.

(4) An owner-operator's election, whether or not under subdivision (b)(3) of this section, to be covered and to have one (1) or more of its drivers covered under a workers' compensation insurance policy or authorized self-insurance plan shall not terminate or otherwise affect the independent-contractor status of the owner-operator or of any of its drivers.

History. Acts 2013, No. 1166, § 1.

SUBCHAPTER 5 — ACCIDENTAL INJURY OR DEATH

SECTION.

- 11-9-502. Limitations on compensation — Exceptions.
- 11-9-503. Violation of safety provisions.
- 11-9-506. Limitations on compensation — Recipients of unemployment benefits.
- 11-9-508. Medical services and supplies — Liability of employer — Definition.

SECTION.

- 11-9-514. Medical services and supplies — Change of physician.
- 11-9-516. Medical services and supplies — Information furnished by provider.
- 11-9-517. Medical services and supplies — Rules.
- 11-9-528. Employer records.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the and safety shall become effective on July preservation of the public peace, health, 1, 2019.”

11-9-501. Limitations on compensation — Death and disability.

CASE NOTES

Credit.

Appellant employee's healing period had ended on June 10, 2011, and respondents were entitled to receive a credit for any permanent partial disability (PPD) payments made toward their maximum obligation for permanent temporary dis-

ability (PTD) benefits; employee was not entitled to simultaneously receive both PPD and PTD, and respondents were entitled to credit for the advance payments they made to the employee. *Skinner v. Tango Transp., Inc.*, 2016 Ark. App. 304, 495 S.W.3d 637 (2016).

11-9-502. Limitations on compensation — Exceptions.

(a) The benefits shall be paid for a period not to exceed four hundred fifty (450) weeks of disability, except that this limitation shall not apply in cases of permanent total disability or death.

(b)(1)(A) For injuries occurring on or after March 1, 1981, but on or before December 31, 2007, and a claim for death or permanent total disability benefits filed on or before June 30, 2019, the first seventy-five thousand dollars (\$75,000) of weekly benefits for death or permanent total disability shall be paid by the employer or its insurance carrier in the manner provided in this chapter.

(B) For injuries occurring on or after January 1, 2008, and a claim for death or permanent total disability benefits filed on or before June 30, 2019, the employer or its insurance carrier shall pay weekly benefits for death or permanent total disability not to exceed three hundred twenty-five (325) times the maximum total disability rate established for the date of the injury under this chapter.

(2)(A) An employee or a dependent of an employee who has filed a claim for death or permanent total disability benefits on or before June 30, 2019, and who receives a total of seventy-five thousand dollars (\$75,000) in weekly benefits for injuries sustained on or before December 31, 2007, shall be eligible to continue to draw benefits at the rates prescribed in this chapter, but all benefits in excess of seventy-five thousand dollars (\$75,000) shall be payable from the Death and Permanent Total Disability Trust Fund.

(B) An employee or a dependent of an employee who has filed a claim for death or permanent total disability benefits on or before June 30, 2019, and who receives the maximum amount specified in subdivision (b)(1)(B) of this section shall be eligible to continue to draw benefits at the rates prescribed by this chapter payable from the trust fund.

(3) The trust fund shall consist of such funds as may be prescribed by law and shall be administered, invested, and disbursed by the Workers' Compensation Commission.

(4) Each employer or the insurance carrier of the employer in each case of death of an employee where there are no dependents shall pay into the trust fund the sum of five hundred dollars (\$500).

(c)(1) A claim against the trust fund shall not be filed later than June 30, 2019, regardless of the date of injury or death, or otherwise.

(2) The trust fund is not liable for a claim for permanent total disability or death filed after June 30, 2019.

(3) For a claim for permanent total disability or death filed after June 30, 2019, the employer at the time of the employee's compensable injury is liable for permanent total disability or death benefits under this chapter, excluding this section and any claim pending under § 11-9-525 on June 30, 2019.

(4) Upon satisfaction of the liabilities of the trust fund, the trust fund shall be terminated.

History. Init. Meas. 1948, No. 4, § 10, Acts 1949, p. 1420; Init. Meas. 1956, No. 1, § 1, Acts 1957; Init. Meas. 1968, No. 1, § 1, Acts 1969; Acts 1973, No. 221, § 1; 1979, No. 253, § 2; 1981, No. 290, § 2; 1986 (2nd Ex. Sess.), No. 10, § 2; A.S.A. 1947, § 81-1310; Acts 2007, No. 1599, § 1; 2016 (3rd Ex. Sess.), No. 4, §§ 5, 6; 2016 (3rd Ex. Sess.), No. 5, §§ 5, 6.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 4 and 5 inserted "and a claim for death or permanent total disability benefits filed on or before June 30, 2019" in (b)(1)(A) and (B); inserted "has filed a claim for death or permanent total disability benefits on or before June 30, 2019, and who" in (b)(2)(A) and (B); and added (c).

CASE NOTES

Credits.

One statute only provides the maximum amount of money an employer must pay as compensation for an employee's work-related death, but the statute is silent on whether a credit for good-faith, but ultimately mistaken, payments may be given; because the widow was not her

husband's dependent, the money the employer paid her could not be counted as weekly benefits or compensation, and the payments did not accrue as a credit against the employer's responsibility to the Fund. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

11-9-503. Violation of safety provisions.

(a)(1) Notwithstanding any other definition of extra-hazardous employer as provided by § 11-9-409(c), any employer who fails to utilize the consultative safety services available through the Division of Labor, its own insurance carrier, or a private safety consultant shall be identified as an extra-hazardous employer if it is established by a preponderance of the evidence that an injury or death is caused in substantial part by the failure of the employer to comply with any Arkansas statute or official rule pertaining to the health or safety of employees or fails to follow safety consultant recommendations.

(2) When so notified, the employer shall comply with § 11-9-409(c)(2)-(8).

(b) Provided, if it is established by a preponderance of the evidence that the employee is injured as a result of the employee's violation of the

employer's safety rules or instructions, the provisions of this section shall not apply.

History. Init. Meas. 1948, No. 4, § 10, Acts 1949, p. 1420; Init. Meas. 1956, No. 1, § 1, Acts 1957; Init. Meas. 1968, No. 1, § 1, Acts 1969; Acts 1975 (Extended Sess., 1976), No. 1227, § 5; 1979, No. 253, § 2; 1981, No. 290, § 2; 1986 (2nd Ex. Sess.), No. 10, § 2; A.S.A. 1947, § 81-1310; reen. Acts 1987, No. 1015, § 5; 1993, No. 796,

§ 16; 2019, No. 315, § 788; 2019, No. 910, § 5366.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(1).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a)(1).

11-9-505. Additional compensation — Rehabilitation.

CASE NOTES

ANALYSIS

Applicability.

Award of Benefits.

Denial of Benefits.

Duty of Employer.

Refusal to Rehire Employee.

Applicability.

Workers' Compensation Commission properly awarded an employee benefits under subsection (a) of this section even though she was no longer receiving worker's compensation benefits; an award of workers' compensation disability benefits is not a statutory prerequisite to an award of § 11-9-505(a) benefits. Ark. Dep't of Corr. v. Jennings, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Award of Benefits.

Workers' Compensation Commission properly awarded an employee benefits under subsection (a) of this section even though the employer had told the employee she could reapply for a position when she recovered, because both the plain language of the statute and its recognized purpose focus on returning an injured employee to work, and thus, reinstatement, rather than reapplication, is required; the employee's attorney made a formal demand for reinstatement, which the employer refused. Ark. Dep't of Corr. v. Jennings, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Workers' Compensation Commission properly awarded an employee benefits under subsection (a) of this section as the employee properly claimed that she was entitled to benefits under Arkansas work-

ers' compensation law; while the employee, as a probationary employee, was not covered under the Family and Medical Leave Act's (FMLA) job-protection provisions, she was not seeking a remedy under the FMLA, and thus, the FMLA was irrelevant to the case. Ark. Dep't of Corr. v. Jennings, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

For Arkansas workers who are injured on the job, subsection (a) of this section provides job protections apart from, and in addition to, what the federal government provides pursuant to the Family and Medical Leave Act (FMLA); the state legislature has deemed it appropriate to grant enhanced job protections for those who are injured on the job, beyond what the FMLA generally provides for all covered employees. Ark. Dep't of Corr. v. Jennings, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Just as the Workers' Compensation Commission did not actually calculate the employee's average weekly wage, it did not specify that the employee was to be paid that wage for a full year; instead, the Commission simply cited to factors required before benefits could be awarded and the statute for the principle that the benefits covered the period in which the employer refused to reinstate the claimant *up to a year*, and the award was proper. Ark. Dep't of Corr. v. Jennings, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Workers' Compensation Commission properly awarded an employee benefits under § 11-9-505(a); § 11-9-506 was not applicable since § 11-9-505(a) benefits are

not disability benefits, and, in any event, there was no showing below that the employee received unemployment benefits and the Commission made no findings on this issue. *Ark. Dep't of Corr. v. Jennings*, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Workers' Compensation Commission clearly found a claimant's supervisor's testimony that the sheriff's department could accommodate the claimant's restrictions to be credible, even though the claimant could not identify a particular job at the department that met her restrictions. Thus, the Commission's decision to award benefits to the claimant pursuant to this section was supported by substantial evidence. *Sebastian Cty. Sheriff's Dep't v. Hardy*, 2017 Ark. App. 597, 534 S.W.3d 163 (2017).

Denial of Benefits.

Workers' Compensation Commission's decision that the former employee failed to prove entitlement to benefits under this section was supported by substantial evidence, including evidence that the employee had proven that she sustained a compensable injury but failed to prove that there was suitable employment within her physical and mental limitations available with the employer, and there was evidence the employee refused to return to work without reasonable cause. *Burke v. Ark. Dep't of Corr.*, 2018 Ark. App. 231, 547 S.W.3d 745 (2018).

Duty of Employer.

Allowing an injured employee to "reapply" and "be considered" for employment is not sufficient to meet the statutory

requirement that the employer return the employee to work; that is because the option to "reapply" and "be considered" for employment necessarily involves an element of uncertainty as to the outcome of the application process, and both the plain language of the statute and its recognized purpose focus on returning an injured employee to work. *Ark. Dep't of Corr. v. Jennings*, 2017 Ark. App. 446, 526 S.W.3d 924 (2017).

Refusal to Rehire Employee.

Workers' Compensation Commission's decision that suitable employment positions for an instructor's assistant existed at the community college throughout the school year was supported by substantial evidence; at the time claimant was released to her normal work duties, her normal workload at the college still existed and her employment contract for the school year had not expired. *Nat'l Park Cmty. Coll. v. Castaneda*, 2018 Ark. App. 458, 558 S.W.3d 911 (2018).

Workers' Compensation Commission's finding that the college refused to return the claimant to work was supported by substantial evidence. When asked whether claimant was offered a return to work when she was released to work, the associate vice-president of human resources testified that the claimant was no longer employed by the college at that time; and claimant was never informed that she was still eligible for rehire after her termination and the college terminated her while she was within her employment contract. *Nat'l Park Cmty. Coll. v. Castaneda*, 2018 Ark. App. 458, 558 S.W.3d 911 (2018).

11-9-506. Limitations on compensation — Recipients of unemployment benefits.

(a) Any other provisions of this chapter to the contrary notwithstanding, no compensation in any amount for temporary total, temporary partial, or permanent total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment insurance benefits under the Division of Workforce Services Law, § 11-10-101 et seq., or the unemployment insurance law of any other state.

(b) Provided, however, if a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment benefits

but only to the extent that the temporary total disability otherwise payable exceeds the unemployment benefits.

History. Init. Meas. 1948, No. 4, § 10, Acts 1949, p. 1420; Init. Meas. 1956, No. 1, § 1, Acts 1957; Init. Meas. 1968, No. 1, § 1, Acts 1969; Acts 1981, No. 290, § 2; A.S.A. 1947, § 81-1310; Acts 1993, No. 796, § 18; 2019, No. 910, § 171.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (a).

11-9-508. Medical services and supplies — Liability of employer — Definition.

(a)(1) The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

(2)(A) Rabies is a highly contagious and potentially deadly infectious disease, and exposure to rabies and the risk of infection is the direct result of an injury caused by the bite of a rabies-infected animal under this section.

(B)(i) An employer shall promptly provide reasonably necessary medical treatment to an injured employee who is exposed to rabies as described in subdivision (a)(2)(A) of this section.

(ii) As used in subdivision (a)(2)(B)(i) of this section, "reasonably necessary medical treatment" means without limitation any diagnostic and preventive measures prescribed for detection, diagnosis, and prevention of rabies.

(b) If the employer fails to provide the medical services set out in subsection (a) of this section within a reasonable time after knowledge of the injury, the Workers' Compensation Commission may direct that the injured employee obtain the medical service at the expense of the employer, and any emergency treatment afforded the injured employee shall be at the expense of the employer. In no circumstance may an employee, his or her family, or dependents, be billed or charged for any portion of the cost of providing the benefits to which he or she is entitled under this chapter.

(c) In order to help control the cost of medical benefits, the commission, on or before July 1, 1994, following a public hearing and with the assistance and cooperation of the State Insurance Department, is authorized and directed to establish appropriate rules to establish and implement a system of managed health care for the State of Arkansas.

(d) For the purpose of establishing and implementing a system of managed health care, the commission is authorized to:

(1) Develop rules for the certification of managed care entities to provide managed care to injured workers;

(2) Develop rules for peer review, service utilization, and resolution of medical disputes;

(3) Prohibit “balance billing” from the employee, employer, or carrier;
(4)(A) Establish fees for medical services as provided in Workers’ Compensation Commission Rule 30 and its amendments.

(B) The commission shall make no distinction in approving fees from different classes of medical service providers or healthcare providers for provision of the same or essentially similar medical services or healthcare services as specified in this section; and

(5)(A) Give the employer the right to choose the initial treating physician, with the injured employee having the right to petition the commission for a one-time-only change of physician to one who is associated with a managed care entity certified by the commission or is the regular treating physician of the employee who maintains the employee’s medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to a certified managed care entity for any specialized treatment, including physical therapy, and only if such primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care entity initially chosen by the employer.

(B) A petition for change of physician shall be expedited by the commission.

(e) Any section or subsection of this chapter notwithstanding, the injured employee shall have direct access to any optometric or ophthalmologic medical service provider who agrees to provide services under the rules, terms, and conditions regarding services performed by the managed care entity initially chosen by the employer for the treatment and management of eye injuries or conditions. Such optometric or ophthalmologic medical service provider shall be considered a certified provider by the commission.

(f) The commission is authorized to promulgate any other rules as may be necessary to carry out the provisions of this section and its purpose of controlling medical costs through the establishment of a managed care system.

History. Init. Meas. 1948, No. 4, § 11, Acts 1949, p. 1420; Acts 1975, No. 330, § 1; 1979, No. 253, § 3; 1981, No. 290, § 3; 1983, No. 444, § 2; A.S.A. 1947, § 81-1311; Acts 1993, No. 796, § 19; 2003, No. 1473, § 23; 2009, No. 653, § 1; 2017, No. 658, § 1; 2019, No. 315, §§ 789-791.

Amendments. The 2017 amendment

redesignated former (a) as (a)(1) and added (a)(2).

The 2019 amendment deleted “and regulations” following “rules” in (c) and (d)(1); substituted “rules” for “regulations” in (d)(2); and deleted “or regulations” following “rules” in (f).

RESEARCH REFERENCES

ALR. Construction and Application of State Workers’ Compensation Laws to Claim for Hearing Loss — Resulting from

Single Traumatic Accident or Event. 90 A.L.R.6th 425.

CASE NOTES

ANALYSIS

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Additional Benefits.

Workers' Compensation Commission's decision denying a claim for additional medical treatment under subsection (a) of this section was supported by substantial evidence, because claimant's hip was normal from a neurological standpoint and a doctor testified there was no reasonable expectation that hip replacement would improve claimant's condition. *Cumbie v. Bost Human Dev. Serv.*, 2012 Ark. App. 389 (2012).

Decision to deny a claimant's request for additional medical benefits under subsection (a) of this section was supported by substantial evidence since the Workers' Compensation Commission elected to credit a doctor's note, which stated that the claimant's subjective complaints of pain exceeded the other objective findings and returned her to work without restrictions, over another report recommending conservative treatment substantially similar to what the claimant had already received. *Belcher v. River Valley Health & Rehab*, 2012 Ark. App. 527 (2012).

Workers' Compensation Commission's opinion displayed a substantial basis under subsection (a) of this section for denying additional medical treatment received by an employee after July 9, 2010, which included both of the employee's back surgeries, because after reporting a compensable injury to the employer in April 2008, the employee continued to work and did not seek medical treatment until July 2008. *Towler v. Tyson Poultry, Inc.*, 2012 Ark. App. 546, 423 S.W.3d 664 (2012).

In a workers' compensation case, substantial evidence supported a decision that a claimant was not entitled to additional medical treatment for his left elbow; although two tests revealed a tear of

a distal-biceps tendon in the elbow, a more recent test did not reveal that injury. Moreover, a doctor opined that surgery would not have improved the claimant's elbow complaints. *Greene v. Cockram Concrete Co.*, 2012 Ark. App. 691 (2012).

Workers' Compensation Commission did not err by awarding benefits for additional and continued medical treatment under subsection (a) of this section for a knee replacement surgery recommended by claimant's doctor after she suffered a knee injury at work; because claimant was working when she sustained the compensable injury and was unable to work after the injury, substantial evidence indicated the injury was not merely a temporary aggravation of a preexisting condition. *Saline Mem'l Hosp. & Risk Mgmt. Res. v. Smith*, 2013 Ark. App. 29 (2013).

Worker claimed that the Workers' Compensation Commission's decision to deny her claim for additional medical treatment was not supported by substantial evidence, but the court affirmed given in part that the Commission decided, as was its province, to credit one doctor's testimony over another's, and the one doctor's testimony indicated that he did not find surgery was necessary. *Lawrence v. St. Edward Mercy Med. Ctr.*, 2013 Ark. App. 546 (2013).

Substantial evidence supported the Workers' Compensation Commission's award of additional medical services recommended by a doctor because the Commission found the doctor's testimony that the employee's joint pain was related to the fact that he had a lumbar fusion to be probative evidence demonstrating that his need for additional medical treatment was related to the reasonably necessary fusion surgery, and the court was unable to say that reasonable minds could not have come to the decision of the Commission. *Jordan v. Home Depot, Inc.*, 2013 Ark. App. 572, 430 S.W.3d 136 (2013).

Award of additional medical treatment for claimant's reflex sympathetic dystrophy was appropriate because substantial evidence supported the Workers' Compensation Commission's decision that additional treatment was reasonable and necessary. *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, 436 S.W.3d 164 (2014).

In a workers' compensation case, substantial evidence supported a decision to award a benefits claimant additional medical treatment under this section because it was up to the Workers' Compensation Commission to resolve conflicting medical evidence, and it chose to give greater weight to a neurosurgeon's recommendations. *Shiloh Nursing & Rehab, LLC v. Lawson*, 2014 Ark. App. 433, 439 S.W.3d 696 (2014).

Award of additional medical treatment was affirmed where the hospital diagnosed the housekeeper with a knee sprain and referred her to her treating orthopedic surgeon for a previous knee injury, the surgeon reexamined the housekeeper and determined that she had suffered a new injury and was worried about an ACL re-tear, and the surgeon recommended an MRI to understand the extent of her injury. *Best Western Inn v. Paul*, 2014 Ark. App. 520, 443 S.W.3d 551 (2014).

Workers' Compensation Commission properly decided to award an employee additional medical treatment because substantial evidence was presented that her injury aggravated, accelerated, or combined with the condition to cause her current disabling condition and need for medical treatment; the Commission gave credence to a doctor's note that the employee's pain was the result of a work-related injury and that the employee was not having any back or leg symptoms prior to the injury. *Emergency Ambulance Serv. v. Burnett*, 2015 Ark. App. 288, 462 S.W.3d 369 (2015).

Finding that claimant had not proven that he was entitled to any additional medical treatment in the form of pain management was not supported by substantial evidence; instead of denying additional narcotic medications based on the evidence of the claimant's addiction history, the Workers' Compensation Commission found that he had not proven that any additional medical treatment in the form of pain management as recommended by a doctor was reasonable or related to his work injury, but there was no medical proof that the claimant's condition did not warrant further treatment. *Rice v. Boyd Metals*, 2015 Ark. App. 443, 468 S.W.3d 297 (2015).

Employer had not shown that it raised any argument regarding construction of

reasonable and necessary under this section to the Workers' Compensation Commission, and the employer was simply questioning the employee's need for additional physical therapy and its appropriateness for her injury, which were factual questions for the Commission. There was substantial evidence to support the award of additional medical treatment in the form of physical therapy, given the physical therapist's opinion and the doctor's opinion that the employee needed physical therapy. *Univ. of Ark. Pub. Employee Claims Div. v. Tocci*, 2015 Ark. App. 505, 471 S.W.3d 218 (2015).

Substantial evidence supported a finding that a benefits claimant was entitled to additional treatment for a knee injury; the claimant was released from medical care with a 2% permanent impairment rating in 2012 after undergoing surgery for a torn meniscus, and he contended that he continued to suffer chronic pain and instability. The weight of the evidence, the interpretation of the medical evidence, and the credibility of the claimant's testimony were matters for the Workers' Compensation Commission to decide. *Get Rid of It Ark. v. Graham*, 2016 Ark. App. 88 (2016).

In a workers' compensation case, an additional surgery recommended for a compensable right shoulder injury was reasonable and necessary under this section because a claimant had an obvious deformity to his right shoulder and continued to have functional limitations and pain after four prior surgeries. Another medical opinion was not relied on because that evaluation was performed a year earlier, and the claimant's condition continued to deteriorate during the intervening time period. *Ark. Dep't of Parks & Tourism v. Price*, 2016 Ark. App. 109 (2016).

Workers' Compensation Commission did not err in affirming and adopting the administrative law judge's award of additional medical benefits to the claimant for the treatment of his compensable shoulder injury as the Commission's decision to award the claimant additional medical benefits in the form of distal clavicle resection surgery was supported by substantial evidence. Two doctors expressed opinions that the resection was necessary to address the claimant's work-related injury; the claimant testified that he had no problem performing his work duties prior

to the 2012 injury and that he had never before experienced similar pain; and the claimant would not have required the surgery but for the compensable injury. *Aramark & Sedgwick Claims Mgmt. Servs. v. Stone*, 2016 Ark. App. 184, 486 S.W.3d 806 (2016).

Workers' Compensation Commission erred in finding that an employee failed to prove entitlement to additional medical treatment because reasonable minds could not come to the conclusion that further medical treatment for carpal-tunnel syndrome was not reasonable and necessary; there was no evidence that the left carpal-tunnel syndrome had resolved, that the healing period for the injury had ended, or that maximum medical improvement had been declared regarding it. *Bennett v. Tyson Poultry, Inc.*, 2016 Ark. App. 479, 504 S.W.3d 653 (2016).

Additional medical treatment, including the recommended left carpal tunnel release surgery, was properly required under this section where objective nerve-conduction studies confirmed the ongoing presence of carpal tunnel, and the treating physician had recommended surgery. *Nucor Yamato Steel Co. v. Kennedy*, 2017 Ark. App. 126, 513 S.W.3d 895 (2017).

Workers' Compensation Commission did not err in finding that the claimant had proved entitlement to additional medical treatment (back surgery) because, after being informed about the claimant's recovery and return to work after a prior back surgery, the claimant's second doctor ultimately concluded that there was not much doubt in his mind that the claimant's need for further treatment occurred as a result of the May 2015 work-related injury; and, although the claimant's first doctor opined that the proposed surgery was not related to the work injury and would not alleviate the claimant's pain, he acknowledged that the second doctor subscribed to a different school of thought regarding whether the surgery would benefit the claimant's condition. *Wright Steel & Mach., Inc. v. Heimer*, 2017 Ark. App. 643, 535 S.W.3d 311 (2017).

Workers' Compensation Commission did not err in granting additional medical treatment to the claimant, specifically, the recommended spinal surgery, because the Commission was confronted with multiple medical opinions and credited the first

doctor's recommendation for spinal surgery; and an independent peer-review report regarding the claimant's proposed treatment agreed with the first doctor's recommendation and opined that the proposed spinal surgery was indicated and medically appropriate. *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408 (2018).

Claimant proved her entitlement to additional medical treatment for the compensable injury to her left knee; although the claimant had an extensive history of problems with her left knee before the compensable injury, the claimant's charge nurse when she worked for the employer testified that the claimant was able to do her job without any problems and never complained about her knee or had to use a cane, but, after the injury, she had to wear a metal brace and use crutches, could not drive, and was unable to do anything but sit-down jobs; and the administrative law judge concluded that the work-related incident aggravated her prior knee problems and that the need for surgery was causally related to the work-related incident. *Baxter Reg'l Med. Ctr. v. Ferris*, 2018 Ark. App. 625, 565 S.W.3d 149 (2018).

Decision by Worker's Compensation Commission to award additional medical treatment to claimant in the form of spinal-fusion surgery was affirmed; in view of opposing medical evidence, it could not be said that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Lowe's Home Ctrs., Inc. v. Robertson*, 2019 Ark. App. 24, 567 S.W.3d 899 (2019).

Although compensable injuries must be established by medical evidence supported by objective findings, and complaints of pain are not objective medical findings as objective findings are those that cannot come under the voluntary control of the patient, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits. *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

Substantial evidence supported the Workers' Compensation Commission's decision that a claimant was entitled to additional medical treatment in the form of surgery; although the Commission was

confronted with competing and differing medical opinions from multiple doctors, the Commission weighed the evidence, gave greater credibility to the opinion of the only doctor who actually examined the claimant, and concluded from the evidence before it that the requested surgery was reasonable and necessary. *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

Award of ongoing pain management was affirmed where the parties stipulated that the claimant had sustained a compensable lower-back injury, and her credible testimony, together with the medical records documenting a worsening of symptoms, was sufficient to prove a causal connection between the claimant's continued need for treatment and the work-related injury. *Univ. of Cent. Ark. v. Srite*, 2019 Ark. App. 511, 588 S.W.3d 849 (2019).

Additional Benefits Denied.

Medical evidence supported the finding that the worker failed to prove that she was entitled to additional medical treatment for her back injury, as one doctor reported there was nothing else that could be done, two doctors concluded that she was not a candidate for surgery, and one found she had reached maximum medical improvement; medical documents showed she had been complaining of left hip and leg pain before sustaining her work injury, and the decision to deny additional treatment for her back injury had a substantial basis. *Pratt v. Rheem Mfg.*, 2013 Ark. App. 577 (2013).

Workers' compensation claimant was not entitled to additional medical treatment in the form of pain management where great weight was given to a doctor's opinion finding that the claimant's 1993 muscle strain had long since healed and did not require ongoing medical treatment. *Cossey v. Pepsi Beverage Co.*, 2015 Ark. App. 265, 460 S.W.3d 814 (2015).

Workers' Compensation Commission did not err in denying the former employee's claim for additional medical treatment because the employee failed to prove a causal connection between the compensable injury to his left foot and his peripheral artery disease (PAD). The record was devoid of any medical evidence that the claimant's PAD was work-related. One month after the compensable injury, when

the first doctor diagnosed PAD, he did not relate that diagnosis to the work-related accident; a second doctor reported that the PAD was not work-related; and the claimant's vascular problems were bilateral and were detected in both legs commencing at or just below the hips, continuing through the thighs all the way to the feet. *Thomas v. Superior Indus.*, 2015 Ark. App. 335, 463 S.W.3d 748 (2015).

Workers' Compensation Commission's decision displayed a substantial basis for the denial of benefits, as the claimant failed to carry his burden of proving that a left-shoulder arthroscopy or rotator-cuff repair was reasonably necessary in connection with the prior compensable right-shoulder injury. *Ingram v. Tyson Mexican Original*, 2015 Ark. App. 519 (2015).

There was substantial evidence to support the denial of additional medical treatment as not related to the claimant's 2011 or 2013 work injuries; her recent compensable strain injuries were deemed resolved after nearly five months of treatment, and while the claimant testified that the conditions worsened after the May 2013 incident, her credibility was in issue, and it was noted that she had been released from care after her 2011 accident because her physician found her to be dishonest in her reporting and that she had been malingering. *Mullin v. Duckwall ALCO*, 2016 Ark. App. 122, 484 S.W.3d 283 (2016).

Because a claimant withdrew her contention that she had also sustained a compensable back injury as a result of her accident, the Workers' Compensation Commission's finding that she failed to prove by a preponderance of the evidence that she was entitled to additional medical treatment in the form of a lumbar MRI for her compensable leg injury was supported by substantial evidence. *Jones v. N. Ark. Reg'l Med. Ctr.*, 2016 Ark. App. 234, 490 S.W.3d 664 (2016).

Workers' Compensation Commission's opinion displayed a substantial basis for denying an employee's claim for additional medical treatment related to her compensable right-shoulder injury because the Commission found that the employee's later shoulder complaints were not related to her original compensable injury; the Commission cited to a doctor's opinion that the employee's shoulder pain had resolved and that no further diagnos-

tic testing or treatment was needed. *Bennett v. Tyson Poultry, Inc.*, 2016 Ark. App. 479, 504 S.W.3d 653 (2016).

Workers' Compensation Commission's denial of a request for additional medical benefits was supported by substantial evidence where the medical testimony showed the worker suffered no pain and no inflammation, he had full range of motion following the shoulder surgery, a fall at home caused him to seek emergency medical treatment, and his complaints of increased pain did not occur until after his eight-month employment with a second employer. *Lovejoy v. Ken's Signs*, 2017 Ark. App. 124, 513 S.W.3d 905 (2017).

Substantial evidence supported the Workers' Compensation Commission's decision that an employee was not entitled to additional medical treatment where the medical records and deposition testimony did not support her assertion that her injury remained unchanged, she had been involved in motor vehicle accidents and ceased going to physical therapy on her own accord, and she worked without restriction before and after being released from medical care. *Jones v. Target Corp.*, 2017 Ark. App. 199, 518 S.W.3d 119 (2017).

Substantial evidence supported the decision to deny the claimant additional medical benefits for treatment by his doctor where the claimant's pain and therapy had been unchanged for nearly 10 years. *Ayers v. Tyson Poultry, Inc.*, 2018 Ark. App. 206, 547 S.W.3d 123 (2018).

Substantial evidence supported the Workers' Compensation Commission's decision that the claimant was not entitled to additional physical therapy for a compensable low-back injury where a physician's opinion and medical records showed that he had already gained the ability to walk unassisted and without a limp and that his condition had stabilized. *Ayers v. Tyson Poultry, Inc.*, 2018 Ark. App. 206, 547 S.W.3d 123 (2018).

Workers' Compensation Commission's decision denying a claimant's request for additional temporary total disability benefits was supported by substantial evidence where three medical opinions that his cervicothoracic syrinx was not causally related to his work-related motor vehicle accident conflicted with a fourth physician's report, and the Commission had

accepted the medical opinions finding no causal relationship. *Page v. Southwestern Bell Tel. Company/AT&T, Inc.*, 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Workers' Compensation Commission did not err in refusing to award the claimant additional medical benefits; although claimant argued that his current back problems were a continuation of the minor back injury sustained on May 31, 2018, he managed to work for at least six separate temporary agencies between June 2018 and March 2019 performing labor-intensive tasks; he performed the necessary job duties with no work restrictions; and he indicated in separate applications for unemployment benefits that he had no disabilities that would prevent him from performing normal job duties. *Potter v. Kelly Servs.*, 2020 Ark. App. 444, 610 S.W.3d 670 (2020).

Adequate Medical Services.

Workers' Compensation Commission erred as a matter of law by not granting the claimant a change of physician after her initial change-of-physician doctor died. *O'Guinn v. Little River Mem'l Hosp.*, 2013 Ark. App. 593, 430 S.W.3d 150 (2013).

Benefits Awarded.

Workers' Compensation Commission did not err in awarding claimant medical treatment and temporary total disability as causally connected to the primary work-related back injury; the Commission did not impermissibly shift any burden of proof, the Commission did not erroneously consider a doctor's opinion on causation and a nurse practitioner's report as probative evidence, and the Commission found that the claimant's underlying condition had not yet been repaired following physical therapy so that maximum medical improvement had not been reached. *Searcy Sch. Dist. v. Allen*, 2020 Ark. App. 149, 594 S.W.3d 169 (2020).

Challenge to Treatment.

Commission rejected the employer's claims including that the doctor's opinion was inaccurate, and it followed that the arguments failed to support the employer's challenge to the medical treatment for the compensable injury. *Firestone Bldg. Prods. v. Hopson*, 2013 Ark. App. 618, 430 S.W.3d 162 (2013).

Claimant was entitled to additional medical treatment because the claimant's treating physician, who evaluated the claimant on multiple occasions for preexisting knee injuries before the claimants' accident, opined that the claimant needed additional medical treatment for a compensable knee injury in the form of a recommended surgical procedure. *Target Corp. v. Bumgarner*, 2015 Ark. App. 12, 455 S.W.3d 378 (2015).

Workers' Compensation Commission's decision to award additional medical benefits in the form of a conservative weight-loss program was supported by substantial evidence because the employee's treating physician thought back surgery would improve her condition but would not perform surgery until she lost weight; the Commission found that surgical intervention was reasonable and necessary for the employee's compensable back injury and that she had previously demonstrated the ability to lose a significant amount of weight. *Lybyer v. Springdale Sch. Dist.*, 2019 Ark. App. 77, 568 S.W.3d 805 (2019).

Claims for Benefits.

Workers' Compensation Commission did not err under subsection (a) of this section in finding that an employee's colon condition was not related to a compensable cervical spine injury because the evidence that would tend to support a finding that the colon problems were causally connected with the compensable injury was not sufficient to satisfy the employee's burden of proof. *Efird v. Whelan Sec., Inc.*, 2012 Ark. App. 548, 423 S.W.3d 643 (2012).

Denial of the employee's claim for additional medical benefits related to a compensable injury was appropriate under subsection (a) of this section because the Workers' Compensation Commission assigned little weight to a doctor's belief that the employee did not have any immediate exacerbation of pain following the motor-vehicle accident. Thus, it gave little weight to the doctor's opinion that the continued pain and need for treatment were causally related to the work-related accident of 2008. *Sanchez v. Pork Group, Inc.*, 2012 Ark. App. 570 (2012).

Based on the medical records and medical opinions presented, Workers' Compensation Commission properly determined that an employee's recent back pain and

complaints were the result of a degenerative condition and not a 12-year-old compensable lumbar strain work injury. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

Workers' Compensation Commission's decision to deny medical treatment in the form of uniformly recommended surgical intervention was not supported by substantial evidence, as reasonable minds could not find that the need for treatment was not causally related to the new injury, which was stipulated to, and the doctor's failure to mention the relevant injury and date was not fatal to the claim. *Hopkins v. Harness Roofing, Inc.*, 2015 Ark. App. 62, 454 S.W.3d 751 (2015).

Findings.

Worker's entitlement to medical treatment was not at issue because the company had already accepted the compensability of the injury and was already responsible for the treatment; the finding that the company was to pay all reasonable medical expenses was simply a restatement of a responsibility that the company had already accepted, and there was no need for additional findings on the issue. *Ark. Highway & Transp. Dep't v. Wiggins*, 2016 Ark. App. 364, 499 S.W.3d 229 (2016).

Nursing Services.

Finding in a workers' compensation action that the services at a facility were not nursing services was improper under this section because the facility's services were nursing services since they would take care of, minister to, and tend to the employee as a brain-injured individual. *Pack v. Little Rock Convention Ctr.*, 2013 Ark. 186, 427 S.W.3d 586 (2013).

Reasonably Necessary Treatment.

Substantial evidence supported the Workers' Compensation Commission's decision that the claimant proved, as required by subsection (a) of this section, that additional medical treatment was reasonably necessary in connection with his compensable back injury as the claimant's physician had stated his opinion within a reasonable degree of medical certainty, and he reaffirmed that opinion during his deposition. *Hyde's Termite & Pest Control v. Rogers*, 2012 Ark. App. 410 (2012).

For purposes of subsection (a) of this section, substantial evidence supported the determination that the treatment given by one doctor was causally related to and necessary for treating the claimant's compensable injury; a 2006 MRI showed a moderate herniation, but a 2010 MRI showed a large herniation, and although a medical center claimed that a physician's opinion concerning compensability was not stated within a reasonable degree of certainty under § 11-9-102(16)(B), the court disagreed because the physician and doctor related the treatment and surgery to the compensable cervical-spine injury, the Workers' Compensation Commission credited their opinions, and the court left the weighing of the medical evidence to the Commission. *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, 422 S.W.3d 171 (2012).

Because the court affirmed the award of additional medical treatment, the court also affirmed the award of temporary total disability benefits associated with the treatment. *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, 422 S.W.3d 171 (2012).

Workers' Compensation Commission's findings did not adequately support its denial of additional medical treatment; the fact that injections proposed by the employee's physician were directed toward pain management did not disqualify them from being reasonably necessary under subsection (a) of this section if that treatment was causally related to the compensable injury. *Stallworth v. Hayes Mech., Inc.*, 2013 Ark. App. 188 (2013).

Substantial evidence supported the Workers' Compensation Commission's decision that an injured employee was not entitled to additional medical treatments because she failed to show by a preponderance of the evidence that surgical intervention was reasonable and necessary. Three physicians concluded that the employee would not benefit from surgical intervention. *Wilkerson v. St. Edward Mercy Med. Ctr.*, 2013 Ark. App. 345 (2013).

Workers' Compensation Commission did not err in holding that an employee's left-knee replacement surgery was not reasonable and necessary medical treat-

ment under subsection (a) of this section for his compensable left-knee injury because it was the opinion of the employee's physician that arthritis was the need for the knee replacement. *Jackson v. O'Reilly Auto., Inc.*, 2013 Ark. App. 755 (2013).

Workers' Compensation Commission's opinion adequately explained its decision and its findings regarding medical causation were supported by substantial evidence because it found that an employee proved that he suffered a compensable injury to his right knee, that he was entitled to temporary total-disability benefits, and that the medical treatment he received was reasonably necessary. *St. John's Reg'l Health Ctr. v. Bartlett*, 2014 Ark. App. 94 (2014).

Workers' Compensation Commission properly awarded an employee additional-medical benefits because he had been receiving various benefits for nearly two years before he filed an AR-C Form, the first hearing on the employee's claim for additional-medical benefits was held more than eight years later, the "additional follow-up care" sought by the employee was reasonably necessary medical treatment, and a subsequent car wreck was not an independent intervening cause of the employee's need for further medical treatment where his conduct was not unreasonable and he was never restricted from driving by any doctor. *Nabholz Constr. Corp. v. White*, 2015 Ark. App. 102 (2015).

In a workers' compensation case, medical treatment provided for shortness of breath and chest pain was reasonable and necessary medical treatment for a work-related ankle injury; after the claimant began medication due to ongoing problems with his ankle, he sought treatment in the emergency room for a cardiac evaluation and diagnostic testing. Although objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and a work-related accident. *Centria, Inc. v. Bailey*, 2015 Ark. App. 270 (2015).

Substantial evidence supported the Workers' Compensation Commission's finding that the worker's post-surgical improvement was evidence that the surgeries were reasonable and necessary, for medical treatment purposes. *Golden Years Manor v. Delargy*, 2015 Ark. App. 309, 461 S.W.3d 725 (2015).

Workers' Compensation Commission concluded that the employee was just a drug-seeking individual, but the Commission made two material mistakes of fact, including finding that the employee was only seeking medication, when it was undisputed that she was requesting additional pain management treatment, plus the Commission erred in finding that a discharge from treatment from one doctor was equivalent to his opinion that additional pain management treatment was not reasonable and necessary. On remand, the Commission was to make findings on the issue of whether additional pain management treatment was reasonably necessary. *Wise v. Village Inn*, 2015 Ark. App. 406, 467 S.W.3d 186 (2015).

In a workers' compensation case, there was no error in determining that a benefits claimant was entitled to treatment for a right-knee anterior cruciate ligament (ACL) tear because the Workers' Compensation Commission credited a doctor's opinion that it was more likely than not that a work injury suffered in October 2013 was the cause of the ACL injury, as well as of the meniscal injuries. *Tyson Foods, Inc. v. Turcios*, 2015 Ark. App. 647, 476 S.W.3d 177 (2015).

Appellant, who was permanently and totally disabled due to a work-related injury, was not entitled under this section to have his former employer purchase a new van to accommodate an electric wheelchair, as the van was not reasonably necessary for the treatment of appellant's injury. *Turner v. S. Alloy & Metals Corp.*, 2017 Ark. App. 277, 521 S.W.3d 515 (2017).

Substantial evidence supported the Workers' Compensation Commission's denial of additional medical-treatment benefits under this section; no doctor recommended that the claimant receive surgery for his cervical-trapezius condition as additional treatment, and after the healing period, there were no further specific recommendations as to what treatments were medically necessary. *Newby v. Cen-*

tury Indus., 2017 Ark. App. 527, 530 S.W.3d 386 (2017).

Workers' Compensation Commission did not err in finding the recommended additional medical treatment for the claimant's compensable knee injury was reasonably necessary and in finding that the doctor's medical opinion was not based on any mistake of material fact; it was not unreasonable for the claimant to have forgotten a single incident when he received an injection in his knee two years before his compensable injury, three years before seeing the doctor, and four years before his deposition. The doctor was aware of preexisting degenerative changes and substantial medical evidence supported the Commission's finding that claimant proved the necessary causal connection between his injury and the need for a total knee replacement. *Tyson Poultry, Inc. v. Montelongo*, 2019 Ark. App. 535, 589 S.W.3d 449 (2019).

Claimant was entitled to pain management as a reasonably necessary medical treatment because the Workers' Compensation Commission was aware of the inconsistencies in the medical opinions of doctors, but gave more weight to one doctor's opinion and recommendation for the treatment, and the appellate court would not reweigh this determination. *Cent. Moloney, Inc. v. Holmes*, 2020 Ark. App. 359, 605 S.W.3d 266 (2020).

Reimbursement.

Substantial evidence supported the Workers' Compensation Commission's decision that an employee was entitled to be reimbursed for the installation of a walk-in shower in her bathroom because the employee was receiving treatment from the employer's accepted physician, who told her that she needed a medical shower; the physician documented the employee's need for a walk-in shower in his office notes, letters, and prescriptions, and the employer did not present any witnesses. *Ark. State Univ. v. Gatlin-Tennant*, 2017 Ark. App. 651 (2017).

Cited: *Myers v. City of Rockport*, 2015 Ark. App. 710, 479 S.W.3d 33 (2015).

11-9-514. Medical services and supplies — Change of physician.

(a)(1) If the employee selects a physician, the Workers' Compensation Commission shall not authorize a change of physician unless the

employee first establishes to the satisfaction of the commission that there is a compelling reason or circumstance justifying a change.

(2)(A) If the employer selects a physician, the claimant may petition the commission one (1) time only for a change of physician, and if the commission approves the change with or without a hearing, the commission shall determine the second physician and shall not be bound by recommendations of claimant or respondent.

(B) However, if the change desired by the claimant is to a chiropractic physician, optometrist, or podiatrist, the claimant may make the change by giving advance written notification to the employer or carrier.

(3) Following establishment of an Arkansas managed care system as provided in § 11-9-508, subdivisions (a)(1) and (2) of this section shall become null and void, and thereafter:

(A)(i) The employer shall have the right to select the initial primary care physician from among those associated with managed care entities certified by the commission as provided in § 11-9-508.

(ii) Where the employer has contracted with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician to a physician who must either be associated with the managed care entity chosen by the employer or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury but only if the primary care physician agrees to refer the employee to the managed care entity chosen by the employer for any specialized treatment, including physical therapy, and only if the primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care entity chosen by the employer.

(iii) Where the employer does not have a contract with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician, to a physician who must either be associated with any managed care entity certified by the commission or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to a physician associated with any managed care entity certified by the commission for any specialized treatment, including physical therapy, and only if the primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by any managed care entity certified by the commission.

(B) A petition for change of physician shall be expedited by the commission.

(b) Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the claimant's expense.

(c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

(d) A request for a hearing on a change of physician by either the employer or the injured employee shall be given preference on the commission's docket over all other matters.

(e) Cooperation on the part of both the injured employee and the employer in an effort to select another physician is encouraged.

(f) When compensability is controverted, subsection (b) of this section shall not apply if:

(1) The employee requests medical assistance in writing prior to seeking the same as a result of an alleged compensable injury;

(2) The employer refuses to refer the employee to a medical provider within forty-eight (48) hours after a written request as provided above;

(3) The alleged injury is later found to be a compensable injury; and

(4) The employer has not made a previous offer of medical treatment.

(g) The commission shall by rule require the inclusion of the information set forth in subsection (f) of this section on all AR-P forms.

History. Init. Meas. 1948, No. 4, § 11, Acts 1949, p. 1420; Acts 1975, No. 330, § 1; 1979, No. 253, § 3; 1981, No. 290, § 3; 1983, No. 444, § 2; A.S.A. 1947, § 81-

1311; Acts 1993, No. 796, § 20; 1999, No. 1167, § 1; 2019, No. 315, § 792.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (g).

CASE NOTES

ANALYSIS

Appeal.

Authorization.

Notice to Employee.

Right to Change.

Appeal.

Because a medical center did not apprise the Workers' Compensation Commission of an argument concerning the change of physical rules or get a ruling on the argument, this issue was waived the

court did not need to address the merits on appeal. *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, 422 S.W.3d 171 (2012).

Court did not agree that a medical center sufficiently raised an issue regarding the change of physician rules; neither the administrative law judge (ALJ) nor the Workers' Compensation Commission made any ruling regarding the change of physician rules, the center did not complain about the omission of the issue from

the ALJ's decision, and although the center submitted a copy of the signed AR-N form, no argument regarding the change of physician rules was made, plus there was no testimony concerning whether the AR-N form was delivered to the claimant, and thus the court could not reach the merits of the issue. *St. Edward Mercy Med. Ctr. & Sisters of Mercy Health Sys. v. Chrisman*, 2012 Ark. App. 475, 422 S.W.3d 171 (2012).

Merits of an issue relating to an authorized treating physician under this section were not considered because the issue was not raised or ruled on below. The Workers' Compensation Commission made no finding on whether appellants were responsible for paying for the treatment under the change-of-physician provisions. *Ark. Dep't of Parks & Tourism v. Price*, 2016 Ark. App. 109 (2016).

Employer's argument under this section concerning the claimant's failure to follow the statutory rules for a change of physician was not presented to the Workers' Compensation Commission and thus was not preserved for appellate review. *Univ. of Cent. Ark. v. Srite*, 2019 Ark. App. 511, 588 S.W.3d 849 (2019).

Authorization.

Workers' Compensation Commission properly ruled that the carrier and employer did not have to pay for an employee's treatment with certain unauthorized physicians because she did not petition for a change-of-physician or follow the statute's provisions, and she signed a notice document that stated unauthorized medical expenses were her responsibility. *Butler v. Lake Hamilton Sch. Dist.*, 2013 Ark. App. 703, 430 S.W.3d 831 (2013).

Notice to Employee.

Workers' Compensation Commission erred in denying an employee's claim for further medical benefits because there was no evidence to support the Commission's finding that the employee received a copy of the notice of the procedure in-

volved in changing physicians. *Delargy v. Golden Years Manor*, 2014 Ark. App. 499, 442 S.W.3d 889 (2014).

There was substantial evidence to support the Commission's finding that the claimant received a copy of the form containing notice of the change-of-physician rule, as a copy of the form was in the record bearing the claimant's signature and claimant's supervisor testified that he was certain claimant received a copy of the form. *Fuller v. Pope Cty. Judge*, 2018 Ark. App. 1, 538 S.W.3d 851 (2018).

Right to Change.

Decision to allow a change of physician was supported by substantial evidence because a benefits claimant was not receiving the treatment that she was entitled to due to her first physician's deterioration in health and ultimate death. The claimant went to another doctor because her first physician was unable to perform his duties due to his advanced age and declining health at the time she attempted to treat with him. *Wal-Mart Assocs. v. Keys*, 2012 Ark. App. 559, 423 S.W.3d 683 (2012).

Benefits claimant's treatment was not compensable because she was not referred to a disputed provider by one of her authorized physicians, and she did not apply for a change of physician under this section; the provisions of subsection (f) of this section were not met in this case where an employer would not have challenged a valid exercise of the right to a one-time change of physician, and there was no evidence to show that the claimant made a claim for any specific medical benefit with any of her authorized doctors. *Foster v. Tyson Poultry, Inc.*, 2013 Ark. App. 172, 426 S.W.3d 563 (2013).

Workers' Compensation Commission erred as a matter of law by not granting the claimant a change of physician after her initial change-of-physician doctor died. *O'Guinn v. Little River Mem'l Hosp.*, 2013 Ark. App. 593, 430 S.W.3d 150 (2013).

11-9-516. Medical services and supplies — Information furnished by provider.

(a)(1) Every hospital or other person furnishing the injured employee with medical services shall permit its records to be copied by and shall furnish full written information to the Workers' Compensation Com-

mission, the Workers' Compensation Fraud Investigation Unit, the employer, the carrier, and the employee or the employee's dependents.

(2) The reasonable cost of copies as set forth in Workers' Compensation Commission Rule 30 shall be paid by the one requesting them to the healthcare or medical service provider furnishing them.

(b) No person who in good faith pursuant to subsection (a) of this section or pursuant to rules established by the commission reports medical information shall incur legal liability for the disclosure of the information.

History. Init. Meas. 1948, No. 4, § 11, Acts 1949, p. 1420; Acts 1979, No. 253, § 3; 1981, No. 290, § 3; 1983, No. 444, § 2; A.S.A. 1947, § 81-1311; Acts 1993, No. 796, § 21; 2019, No. 315, § 793.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

11-9-517. Medical services and supplies — Rules.

The Workers' Compensation Commission is authorized to establish rules, including schedules of maximum allowable fees for specified medical services rendered with respect to compensable injuries, for the purpose of controlling the cost of medical and hospital services and supplies provided pursuant to §§ 11-9-508 — 11-9-516.

History. Init. Meas. 1948, No. 4, § 11, Acts 1949, p. 1420; Acts 1986 (2nd Ex. Sess.), No. 10, § 4; A.S.A. 1947, § 81-1311; Acts 2019, No. 315, § 794.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and in the text.

11-9-518. Weekly wages as basis for compensation.

CASE NOTES

ANALYSIS

Exceptional Circumstances.
Weekly Wage Determination.

Exceptional Circumstances.

Determination of a workers' compensation claimant's average weekly wage (AWW) based on exceptional circumstances under subsection (c) of this section was supported by substantial evidence where the claimant's business expenses were deducted from his gross receipts; it was not the function of the appellate court

to conclude whether there was an alternative way to compute the AWW. *No Way Pulpwood, Inc. v. McCarter*, 2012 Ark. App. 506 (2012).

Weekly Wage Determination.

Substantial evidence supported the Workers' Compensation Commission's determination of the average weekly wage of a correctional officer based on the contract rate of hire. *Ark. Dep't of Corr. v. Jackson*, 2019 Ark. App. 124, 571 S.W.3d 539 (2019).

11-9-519. Compensation for disability — Total disability.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Workers' Compensation Laws to Claim for Hearing Loss — Result-

ing from Long Term Noise Exposure. 99 A.L.R.6th 643 (2014).

CASE NOTES

ANALYSIS

In General.
Burden of Proof.
Disability.
—Permanent.
Evidence.
Wage Earning Loss.

In General.

Court of Appeals of Arkansas, Division One, declined to conclude that a claimant's residence could be considered in assessing total disability given that subdivision (e)(1) of this section makes no provision for whether employment was available in any particular geographical area and § 11-9-704 requires courts to construe the provisions of the Workers' Compensation Law strictly. *Birtcher v. Mena Water Utils.*, 2017 Ark. App. 210, 518 S.W.3d 707 (2017).

Burden of Proof.

Substantial evidence supported the Workers' Compensation Commission's finding that a claimant failed to prove that the claimant sustained a compensable head injury in a motor vehicle accident because there were no complaints by the claimant regarding the claimant's head or brain having been injured in the accident until more than two years following the event. Furthermore, there was no evidence that an MRI finding of scarring was related to the accident. *Myers v. City of Rockport*, 2015 Ark. App. 710, 479 S.W.3d 33 (2015).

Disability.

Denial of claim for permanent and total disability and an assignment of 25-percent loss in wage-earning capacity was supported by substantial evidence, because the functional capacity evaluation and vocational evaluation both indicated that the employee was capable of performing sedentary and light work; there was

no evidence that the employee could not find employment in or successfully perform any of the types of jobs listed in his vocational evaluation, not least of all since the employee never attempted to look for or apply for any job after his injury. *Rendell v. Ark. Children's Hosp.*, 2012 Ark. App. 539 (2012).

Benefits claimant failed to prove that she was permanently and totally disabled under subdivision (e)(1) of this section where a neurosurgeon concluded that the claimant was able to work with restrictions, and a vocational-rehabilitation expert agreed based on the neurosurgeon's opinion and the results of a functional capacity evaluation. Little weight was given to another doctor's opinion that the claimant was unable to work because she relied on subjective and generalized information. *Gibson v. Wal-Mart Assocs.*, 2012 Ark. App. 560 (2012).

In a workers' compensation case, an applicant was found not to be permanently disabled based on an alleged failure to prove an inability to earn any meaningful wage in the same or other employment; there was a substantial basis for reducing the finding of permanent disability to a 40 percent wage-loss disability. It was within the Workers' Compensation Commission's authority to assess that weight and credibility differently than did the administrative law judge. *Pruitt v. Community Dev. Inst. Head Start*, 2013 Ark. App. 548 (2013).

—Permanent.

Court affirmed the decision of the Workers' Compensation Commission that appellee met his burden of proving entitlement to permanent and total disability benefits under subdivision (e)(1) of this section because substantial evidence supported the Commission's finding that appellee was permanently and totally disabled. Appellee clearly could not perform

the strenuous kinds of jobs he held prior to his injury, and the Commission accepted his testimony that he was unable to perform sedentary work. *American Eagle Airlines & Specialty Risk Servs. v. Berndt*, 2013 Ark. App. 230 (2013).

Denial of a claimant's claim for permanent-total-disability benefits was appropriate because substantial evidence supported the Workers' Compensation Commission's decision that the claimant's right hand was functional and that the claimant could participate in gainful employment. The Commission found that the claimant's unreliable effort and magnified symptoms during testing were entitled to significant weight. *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, 436 S.W.3d 164 (2014).

Workers' Compensation Commission's finding that a surgical technician was not permanently and totally disabled was supported by substantial evidence given the similarity to another case in which an employee, who underwent a spinal fusion, used narcotic pain medication, and made little effort to look for work, was found not permanently and totally disabled, and the technician was more educated. *Cooper v. Univ. of Ark. for Med. Sciences*, 2017 Ark. App. 58, 510 S.W.3d 304 (2017).

Worker retired because of his work-related injuries and associated difficulties with the particular job, and he did not seek other work that he was capable of performing; the Commission's decision denying the worker's claim that he was permanently and totally disabled was upheld, and substantial evidence supported the Commission's decision that the worker sustained 50% wage-loss disability. *Hubbard v. Riceland Foods*, 2017 Ark. App. 135, 515 S.W.3d 171 (2017).

Evidence.

Workers' Compensation Commission did not err under subdivision (e)(1) of this section in holding that an employee was not entitled to permanent total disability benefits for a spine injury; the employee had not made any effort to pursue vocational rehabilitation in order to go back to work, and the employee was still capable of participating in retail shopping and other daily activities. *Efird v. Whelan Sec., Inc.*, 2012 Ark. App. 548, 423 S.W.3d 643 (2012).

Workers' Compensation Commission did not err in denying an employee's claim

for permanent total disability benefits under subsection (e) of this section related to a back injury; the case turned on the Commission's evaluation of the weight and credibility of the evidence regarding the primary issue, the employee's ability to earn meaningful wages. *Moore v. Ark. State Highway Transp. Dep't*, 2013 Ark. App. 752 (2013).

Workers' Compensation Commission's denial of the worker's claim for permanent total disability for a back injury and the finding that he sustained only a 10 percent wage loss turned on the Commission's assessment of witness credibility and the weight of the evidence, and the denial had a substantial basis, but the wage-loss issue was remanded in light of the reversal of the impairment rating; the Commission did not find that the worker was motivated to return to the workforce, and the Commission considered his age, education, work experience, and the nature of the injury. *Thompson v. Mt. Home Good Samaritan Vill.*, 2014 Ark. App. 493, 442 S.W.3d 873 (2014).

Workers' Compensation Commission properly found that an employee failed to prove permanent total disability or entitlement to a greater amount of wage-loss benefits; while he was 57 years old, had not completed the 11th grade, and did not have skills transferable into the light category of work, his true functional capacity level was unknown. The employee gave unreliable effort in the examination and his statements to his doctors and a vocational rehabilitation counselor showed his lack of motivation to return to work, which impeded the Commission's ability to assess the full extent of the employee's current wage-earning capacity. *Stauber v. City of North Little Rock*, 2015 Ark. App. 54 (2015).

Workers' Compensation Commission did not err in finding that a claimant failed to prove that the claimant was permanently and totally disabled; despite the treating physician's belief that the claimant was totally disabled, the claimant was very intelligent and had transferable and marketable skills that did not involve physically demanding activities and the record was devoid of any physical limitations being placed on the claimant by any of his treating surgeons. *Nichols v. Micro Plastics, Inc.*, 2015 Ark. App. 134 (2015).

Substantial evidence supported the Workers' Compensation Commission's decision that a claimant was not permanently and totally disabled, but sustained wage-loss disability in the amount of 35% as a result of a shoulder injury because the claimant made no effort to find a job or return to the workforce and no treating physician opined that the claimant was unable to resume any gainful employment. Furthermore, the Commission did not find credible that the claimant was confined to the claimant's bedroom as a result of the injury. *Schall v. Univ. of Ark. for Med. Sciences*, 2017 Ark. App. 50, 510 S.W.3d 302 (2017).

Substantial evidence supported the Workers' Compensation Commission's decision denying an employee permanent and total disability benefits where no physician had opined that the employee was permanently and totally disabled, he had returned to light-duty work, the employee was able to drive and care for himself, and there were potential jobs that were not physically demanding. *Birtcher v. Mena Water Utils.*, 2017 Ark. App. 210, 518 S.W.3d 707 (2017).

Workers' Compensation Commission's opinion that the employee suffered compensable mental injuries and that the continued treatment of those injuries was reasonable and necessary was supported by substantial evidence; the employee's medical records noted a depressed mood immediately following his compensable injury. *Ark. Highway & Transp. Dep't v. Dunlap*, 2017 Ark. App. 637, 535 S.W.3d 674 (2017).

Workers' Compensation Commission's finding that an employee established by a preponderance of the evidence that he was entitled to benefits for permanent total disability was supported by substantial evidence because the medical opinions showed that the employee was either completely disabled or, at the very least, had no use of his right arm. *Ark. Highway & Transp. Dep't v. Dunlap*, 2017 Ark. App. 637, 535 S.W.3d 674 (2017).

Workers' Compensation Commission did not err in finding that an employee was not permanently and totally disabled where the employee testified that he was able to drive, perform household chores, and cook for himself, the employee graduated from high school, and after considering his physical limitations, two vocational rehabilitation assessments identified potential jobs for him in the area. *Woods v. Tyson Poultry, Inc.*, 2018 Ark. App. 186, 547 S.W.3d 456 (2018).

Wage Earning Loss.

Workers' compensation claimant was properly awarded a 25% wage loss disability in excess of his permanent partial impairment given the fact-intensive inquiry; the Workers' Compensation Commission recognized that the claimant was middle-aged, had work experience primarily in the manual labor fields, but also noted that functional evaluations over the years showed his capacity to work in light duty with lifting restrictions. *Cossey v. Pepsi Beverage Co.*, 2015 Ark. App. 265, 460 S.W.3d 814 (2015).

11-9-521. Compensation for disability — Scheduled permanent injuries.

RESEARCH REFERENCES

ALR. Construction and Application of State Workers' Compensation Laws to Claim for Hearing Loss — Resulting from Single Traumatic Accident or Event. 90 A.L.R.6th 425.

Validity, Construction, and Application of State Workers' Compensation Laws to Claim for Hearing Loss — Resulting from Long Term Noise Exposure. 99 A.L.R.6th 643 (2014).

CASE NOTES

ANALYSIS

Eye Injuries.**Temporary Total Disability.****Total Permanent Disability.****Eye Injuries.**

Based on an ophthalmologist's testimony, there was substantial evidence to support the Workers' Compensation Commission's finding that a claimant was entitled to a 100% loss of vision to the claimant's left eye. However, the Commission erred in converting the claimant's impairment to the body as a whole; because the impairment to the claimant's left eye came within the scheduled-injury category, the claimant was limited to the scheduled benefits. *Multi-Craft Contrs., Inc. v. Yousey*, 2018 Ark. 107, 542 S.W.3d 155 (2018).

Temporary Total Disability.

Benefits claimant was not entitled to additional temporary total disability benefits under subsection (a) of this section because the evidence did not support an argument that the claimant was still in a healing period two years after her original compensable injuries or that she had reentered a healing period; the claimant reached maximum medical improvement by August 6, 2010, and her continued complaints were too diffuse and unsupported by corroborating clinical findings to suggest otherwise. By the time the claimant sought unauthorized treatment, her residual symptoms were attributed to de Quervain's Tenosynovitis, which could not have been pinpointed to a particular cause, the claimant's own testimony supporting the finding that she had reached the end of her healing period for her left upper extremity, and the claimant abandoned her light-duty employment for reasons unrelated to her compensable hand injuries. *Foster v. Tyson Poultry, Inc.*,

2013 Ark. App. 172, 426 S.W.3d 563 (2013).

Appellate review was not possible because it was unclear whether the Workers' Compensation Commission determined that a benefits claimant remained in his healing period or started a new healing period, whether he suffered a total incapacity to earn a meaningful wage, whether he returned to work within the meaning of this section, whether his absenteeism was related to a compensable knee injury, and whether violations of the attendance policy did or did not affect temporary total disability eligibility under § 11-9-526. *Tyson Foods, Inc. v. Turcios*, 2015 Ark. App. 647, 476 S.W.3d 177 (2015).

Decision awarding a claimant temporary total disability (TTD) benefits was reversed and remanded where the administrative law judge (ALJ) clearly analyzed the claimant's entitlement to TTD benefits under § 11-9-526, it was undisputed that the claimant's injury was a scheduled injury, and neither the Workers' Compensation Commission nor the ALJ made any findings with regard to the requirements set forth in subsection (a) of this section. *City of Fort Smith v. Kaylor*, 2019 Ark. App. 517, 588 S.W.3d 803 (2019).

Total Permanent Disability.

Denial of a claimant's claim for permanent-total-disability benefits was appropriate because substantial evidence supported the Workers' Compensation Commission's decision that the claimant's right hand was functional and that the claimant could participate in gainful employment. The Commission found that the claimant's unreliable effort and magnified symptoms during testing were entitled to significant weight. *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, 436 S.W.3d 164 (2014).

11-9-522. Compensation for disability — Unscheduled permanent partial disability.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Workers' Compensation Laws to Claim for Hearing Loss — Result-

ing from Long Term Noise Exposure. 99 A.L.R.6th 643 (2014).

CASE NOTES

ANALYSIS

Earning Capacity.

Evidence.

Offer of Employment.

Percentage of Impairment.

Preclusion of Wage Loss Claim.

Wage Earning Loss.

Earning Capacity.

Determination that the claimant was disqualified from receiving wage loss benefits was proper, because the claimant was not entitled to permanent-partial disability benefits in excess of his one-percent permanent physical impairment, when under this section, the claimant was terminated from his job due to his own misconduct in connection with the job. *Meadows v. Tyson Foods, Inc.*, 2013 Ark. App. 182 (2013).

Former school teacher, age 59, whose back injury prevented him from working full days but who was unable to find part time work, was entitled to an increased disability rating and permanent disability based on the wage-loss factor, pursuant to this section. The ALJ's opinion specifically referenced consideration of appellee's age, education, experience, and motivation to return to work. *Gravette Sch. Dist. v. Harmon*, 2013 Ark. App. 266 (2013).

Claimant was entitled to wage-loss disability because the Workers' Compensation Commission credited a doctor's opinion and considered the claimant's age and chronic pain, limited education, lack of transferable skills, and motivation to find employment. The Commission also considered the testimony of the claimant's vocational consultant that the claimant cooperated in efforts to find gainful employment within his restrictions. *Cent. Moloney, Inc. v. Holmes*, 2020 Ark. App. 359, 605 S.W.3d 266 (2020).

Evidence.

Substantial evidence supported an award of wage-loss disability benefits because an employee was a 54-year-old man with a GED whose only additional education was as a paramedic, which the employee had done for 23 years before the employee's injury and could not subsequently do, and any lack of motivation to return to work, which was only one factor, as well as any transferable skills, were considered. *Johnson County Reg'l Med. Ctr. v. Lindsey*, 2014 Ark. App. 586, 446 S.W.3d 647 (2014).

Workers' Compensation Commission properly found that an employee failed to prove permanent total disability or entitlement to a greater amount of wage-loss benefits; while he was 57 years old, had not completed the 11th grade, and did not have skills transferable into the light category of work, his true functional capacity level was unknown. The employee gave unreliable effort in the examination and his statements to his doctors and a vocational rehabilitation counselor showed his lack of motivation to return to work, which impeded the Commission's ability to assess the full extent of the employee's current wage-earning capacity. *Stauber v. City of North Little Rock*, 2015 Ark. App. 54 (2015).

Workers' Compensation Commission's award of 32% permanent partial disability was supported by substantial evidence considering factors such as the claimant's age and work experience. *Nichols v. Micro Plastics, Inc.*, 2015 Ark. App. 134 (2015).

Substantial evidence supported the Workers' Compensation Commission's decision that a claimant was not permanently and totally disabled, but sustained wage-loss disability in the amount of 35% as a result of a shoulder injury because the claimant made no effort to find a job or

return to the workforce and no treating physician opined that the claimant was unable to resume any gainful employment. Furthermore, the Commission did not find credible that the claimant was confined to the claimant's bedroom as a result of the injury. *Schall v. Univ. of Ark. for Med. Sciences*, 2017 Ark. App. 50, 510 S.W.3d 302 (2017).

Workers' Compensation Commission's decision to award an injured employee an 11% impairment rating to his body as a whole and 10% in wage-loss disability was supported by substantial evidence; the Commission considered all the evidence and testimony presented, the decision was supported by objective medical findings, and the Commission clearly stated that it found a neurologist's conclusions to be supported by the record and that his conclusions were entitled to more evidentiary weight than the opinions of various other doctors. *Tempworks Mgmt. Servs. v. Jaynes*, 2020 Ark. App. 70, 593 S.W.3d 519 (2020).

Workers' Compensation Commission's decision that a claimant was entitled to 10% wage-loss disability benefits was supported by substantial evidence. The Commission's findings were based on the appropriate wage-loss factors, and its opinion adequately discussed the rationale that underlay that finding. *Hot Springs Convention Ctr. v. Phelps*, 2021 Ark. App. 83 (2021).

Offer of Employment.

In a workers' compensation case, a finding that an employer did not make a bona fide job offer to a benefits claimant under subdivision (c)(1) of this section precluding her from obtaining wage-loss disability was supported by substantial evidence because a greeter job was beyond the claimant's physical limitations, according to the description of the job and the claimant's experience in working in that precise position; the employer failed to carry its burden of proof relating to the legitimacy and limitations of the alleged "greeter" position. *Wal-Mart Assocs. v. Keys*, 2012 Ark. App. 559, 423 S.W.3d 683 (2012).

Subdivision (b)(2) of this section did not bar an employee's receipt of wage-loss disability benefits because, after the employer made a bona fide job offer, the employee's condition worsened, after which the employer made no further offer

of employment within the employee's restrictions. *Johnson County Reg'l Med. Ctr. v. Lindsey*, 2014 Ark. App. 586, 446 S.W.3d 647 (2014).

Plain language of the statutes placed upon the employer or insurer the burden to demonstrate the existence of a bona fide offer of employment at wages equal to or greater than the employee's average weekly wage at the time of the accident. *Calhoun v. Area Agency on Aging of Southeast Ark.*, 2021 Ark. 56, 618 S.W.3d 137 (2021).

Percentage of Impairment.

In a workers' compensation case, substantial evidence supported a four-percent impairment rating for a compensable right shoulder injury under subdivision (g)(1)(A) of this section based on the testimony of a treating physician; the Workers' Compensation Commission was not required to award an impairment rating recommended by the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1993). *Greene v. Cockram Concrete Co.*, 2012 Ark. App. 691 (2012).

Workers' compensation claimant was not entitled to receive permanent partial-disability benefits in excess of the percentage of the claimant's permanent physical impairment because there was testimony from the claimant that the claimant received a raise upon returning to work. Moreover, the employer introduced an exhibit documenting the wages and hours worked by the claimant that showed that the claimant worked consistently after returning from an accident, including working a substantial amount of overtime. *Wilson v. Riceland Foods, Inc.*, 2017 Ark. App. 653, 535 S.W.3d 317 (2017).

Finding that a workers' compensation claimant was entitled to a 30% impairment rating was supported by substantial evidence because the Workers' Compensation Commission was confronted with two different medical opinions as to the claimant's impairment rating and it was within the Commission's province to reconcile the conflicting evidence, including the medical evidence. *Ark. Highway & Transp. Dep't v. Work*, 2018 Ark. App. 600, 565 S.W.3d 138 (2018).

Preclusion of Wage Loss Claim.

Employee was properly denied wage-loss disability benefits under subdivision

(b)(1) of this section after the employee slipped and fell while cleaning floors because the employee failed to prove that the employee suffered a permanent anatomical impairment. *Drake v. Sheridan Sch. Dist.*, 2013 Ark. App. 150 (2013).

Wage Earning Loss.

Twenty-five percent wage loss benefit was appropriate because the Workers' Compensation Commission properly considered under subdivision (b)(1) of this section that the employee would be able to pursue gainful employment, even with his permanent physical limitations, based on his work experience and above-average intelligence. *Cooper Tire & Rubber Co. v. Leach*, 2012 Ark. App. 462 (2012).

In a workers' compensation case, a finding of a 25 percent wage-loss disability was supported by substantial evidence where the claimant's age, education, work experience, attitude and motivation, permanent anatomical impairment, and permanent physical limitations were considered; the claimant only had an 8th grade education, she was 60 years old, she continued to have pain and lifting and standing restrictions, and she had no marketable skills. *Wal-Mart Assocs. v. Keys*, 2012 Ark. App. 559, 423 S.W.3d 683 (2012).

In a workers' compensation case, an applicant was found not to be permanently disabled based on an alleged failure to prove an inability to earn any meaningful wage in the same or other employment; there was a substantial basis for reducing the finding of permanent disability to a 40 percent wage-loss disability. It was within the Workers' Compensation Commission's authority to assess that weight and credibility differently than did the administrative law judge. *Pruitt v. Community Dev. Inst. Head Start*, 2013 Ark. App. 548 (2013).

Workers' Compensation Commission demonstrated a substantial basis for denying an employee's claim for wage-loss disability because reasonable minds could conclude the employee failed to prove she was entitled to any wage-loss disability in excess of the fifteen-percent whole body impairment awarded; the employee's work experience was rather sedentary, and the functional-capacity evaluation concluded that despite her significant limitations, she was capable of performing sedentary tasks. *Templeton v. Dollar Gen-*

eral Store, 2014 Ark. App. 248, 434 S.W.3d 417 (2014).

Workers' Compensation Commission's denial of the worker's claim for permanent total disability for a back injury and the finding that he sustained only a 10 percent wage loss turned on the Commission's assessment of witness credibility and the weight of the evidence, and the denial had a substantial basis, but the wage-loss issue was remanded in light of the reversal of the impairment rating; the Commission did not find that the worker was motivated to return to the workforce, and the Commission considered his age, education, work experience, and the nature of the injury. *Thompson v. Mt. Home Good Samaritan Vill.*, 2014 Ark. App. 493, 442 S.W.3d 873 (2014).

In a workers' compensation case, a claimant was not entitled to wage-loss disability because he had a bona fide offer to be employed at wages equal to his average weekly wage at the time of the accident, pursuant to this section; the claimant had the same hours and pay, and he was accommodated when he returned to work. *Redd v. Blytheville Sch. Dist.*, 2014 Ark. App. 575, 446 S.W.3d 643 (2014).

In a workers' compensation case, there was no error in denying a claimant wage-loss benefits under this section because his employment opportunities had not been substantially reduced by his compensable injury; despite having a limited education and reading skills, the claimant could return to the same position. The findings were based on substantial evidence where the claimant had been returned to full duty without restrictions, he repeatedly stated that he wanted to return to work and was able to operate the same machinery, and he testified that he would be able to make the same wage as before the injury, but simply needed to run the machine from the other side. *Gillham v. South Cent. Coal Co.*, 2015 Ark. App. 64 (2015).

Substantial evidence supported the finding that the worker's two back surgeries entitled her to a 14% impairment rating; the Workers' Compensation Commission found that the worker was entitled to a 25% wage-loss disability based on her young age, experience, and lack of interest in returning to work within her restrictions, and this was also supported by

substantial evidence. *Golden Years Manor v. Delargy*, 2015 Ark. App. 309, 461 S.W.3d 725 (2015).

Workers' Compensation Commission's award of 23% wage-loss disability was supported by substantial evidence given claimant's lack of motivation and the dispute as to claimant's earning potential. *Cooper v. Univ. of Ark. for Med. Sciences*, 2017 Ark. App. 58, 510 S.W.3d 304 (2017).

Finding that a workers' compensation claimant was entitled to a 65% wage-loss award was supported by substantial evidence because the Workers' Compensation Commission considered the claimant's age, limited education, lack of transferable skills based on the claimant's work history, motivation, and unreliable functional-capacity evaluation, as well as other factors, and the Commission's opinion adequately discussed the rationale underlying that finding. *Ark. Highway & Transp. Dep't v. Work*, 2018 Ark. App. 600, 565 S.W.3d 138 (2018).

Workers' Compensation Commission's finding of 40% wage-loss disability was affirmed; the commission considered the claimant's education and work-related experience, the medical evidence and the claimant's physical limitations both before and after the work-related accident, and the fact that the claimant had elected to retire not only because of his physical limitations but also for financial reasons. *Ark. State Military Dep't v. Jackson*, 2019 Ark. App. 92, 568 S.W.3d 811 (2019).

Substantial evidence supported the

findings that a worker's compensation claimant, who had worked as a correctional officer for 23 years, was entitled to 20% wage-loss disability in addition to a 3% anatomical rating and that the compensable back injury was the major cause of the disability, despite the employer's contention that an unauthorized surgery constituted a nonwork-related independent intervening cause that was improperly considered in awarding wage loss. The findings were based on proper wage-loss factors, the opinion adequately discussed the rationale, and the causation findings were supported by the claimant's testimony and medical evidence. *Ark. Dep't of Corr. v. Jackson*, 2019 Ark. App. 124, 571 S.W.3d 539 (2019).

Although appellants contended that claimant, a network support engineer, was barred from wage-loss disability benefits as he chose to retire only a few hours after reporting to work, the Workers' Compensation Commission credited claimant's testimony that the ultimate reason for retiring was the increase in pain and the "dumbfoundedness" he experienced when back on the job and this testimony was corroborated; as it is the Commission's duty to weigh the evidence and not the appellate court, the Commission's decision that claimant was entitled to 50% wage-loss disability benefits was affirmed. *Ark. DOT v. Abercrombie*, 2019 Ark. App. 372, 584 S.W.3d 701 (2019).

Cited: *Myers v. City of Rockport*, 2015 Ark. App. 710, 479 S.W.3d 33 (2015).

11-9-523. Compensation for disability — Hernia.

CASE NOTES

ANALYSIS

Elements.

- Force to Abdominal Wall.
- Severe Pain.

Elements.

—Force to Abdominal Wall.

Claimant failed to provide clear proof of the exact mechanics of his fall, and the broad assumption by the administrative law judge that the claimant, who was morbidly obese, flipped in the air after being struck by a pipe on a forklift, did not meet the requirements of the statute, plus

none of his treating physicians opined that the hernia was caused by a work-related accident; the finding that he failed to satisfy the statutory requirement that he prove that his hernia occurred immediately following his accident as a result of the application of force to his abdominal wall was affirmed. *Jaramillo v. Sys. Contr.*, 2014 Ark. App. 552, 445 S.W.3d 524 (2014).

—Severe Pain.

Although claimant reported that his physical distress following the alleged occurrence of his hernia was such as to require the attendance of a licensed phy-

sician within 72 hours after the occurrence, as required by the statute, the undisputable fact was he did not seek medical treatment for almost a year following the accident, and he medical re-

cords did not support that his hernia-related symptoms were debilitating in the sense anticipated by the statute. *Jaramillo v. Sys. Contr.*, 2014 Ark. App. 552, 445 S.W.3d 524 (2014).

11-9-524. Compensation for disability — Disfigurement.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Workers' Compensation

Laws Specifically Providing for Facial Disfigurement. 11 A.L.R.7th Art. 7 (2015).

11-9-526. Compensation for disability — Refusal of employee to accept employment.

CASE NOTES

ANALYSIS

Applicability.

Attendance.

Evidence.

Refusal of Employment.

Applicability.

Substantial evidence failed to support the Workers' Compensation Commission's finding that a truck driver employee failed to prove entitlement to temporary total disability benefits from December 21, 2017, to a date yet to be determined; although the employee had previously declined light-duty work within the restrictions for the knee strain, his family physician later totally restricted him from working due to the deep-vein-thrombosis injury. This section had no application because the employee was totally restricted from working and thus there was no work the employer could have offered that would have accommodated the employee's off-work status. *Grant v. Westar Refrigerated Transp.*, 2020 Ark. App. 106, 594 S.W.3d 154 (2020).

No employment suitable to an employee's capacity is possible when an employee has been taken off work entirely. *Grant v. Westar Refrigerated Transp.*, 2020 Ark. App. 106, 594 S.W.3d 154 (2020).

Attendance.

Appellate review was not possible because it was unclear whether the Workers' Compensation Commission determined that a benefits claimant remained in his healing period or started a new healing

period, whether he suffered a total incapacity to earn a meaningful wage, whether he returned to work within the meaning of § 11-9-521, whether his absenteeism was related to a compensable knee injury, and whether violations of the attendance policy did or did not affect temporary total disability eligibility under this section. *Tyson Foods, Inc. v. Turcios*, 2015 Ark. App. 647, 476 S.W.3d 177 (2015).

Evidence.

Workers' Compensation Commission demonstrated a substantial basis for denying an employee's claim for wage-loss disability because reasonable minds could conclude the employee failed to prove she was entitled to any wage loss disability in excess of the fifteen-percent whole body impairment awarded; the employee's work experience was rather sedentary, and the functional-capacity evaluation concluded that despite her significant limitations, she was capable of performing sedentary tasks. *Templeton v. Dollar General Store*, 2014 Ark. App. 248, 434 S.W.3d 417 (2014).

Under this section, former employee was not entitled to temporary total disability benefits for a period of time because the evidence showed that she refused suitable employment that the employer made available within her physical restrictions; although the employee claimed the work offered was not within the doctor's restrictions, the work was not repetitive for the body part that

was injured and for which the restrictions were designed — the employee's right shoulder. *Davenport v. Wal-Mart Stores*, 2018 Ark. App. 494, 558 S.W.3d 436 (2018).

Workers' Compensation Commission properly denied the employee, a school custodian, temporary total disability benefits because its finding that the employee chose to resign was supported by substantial evidence; although the employee testified that she resigned so she would not get a bad evaluation, the issue turned on credibility and the employee did not provide the reason for resigning on the resignation form. *Lybyer v. Springdale Sch. Dist.*, 2019 Ark. App. 77, 568 S.W.3d 805 (2019).

Refusal of Employment.

Workers' Compensation Commission properly denied the employee, a school

custodian, temporary total disability benefits because the employee chose to resign when the employers were providing her work within her restrictions; although the employee claimed she resigned rather than be terminated and get a bad evaluation, a voluntary resignation is a refusal of employment. *Lybyer v. Springdale Sch. Dist.*, 2019 Ark. App. 77, 568 S.W.3d 805 (2019).

Because the claimant was not on modified-duty work beyond the statutory waiting period, and the employer offered modified-duty work to him, but he chose to abandon his job and seek employment elsewhere, he was not entitled to temporary total disability benefits from June 4 to June 14, 2018, based upon his refusal. *Potter v. Kelly Servs.*, 2020 Ark. App. 444, 610 S.W.3d 670 (2020).

11-9-527. Compensation for death.

CASE NOTES

ANALYSIS

Construction.
Beneficiaries.
—Partial Dependency.
Termination of Parental Rights.
"Wholly and Dependent."

Construction.

Clear language of this section does not allow for termination of a minor child's survivor benefits upon termination of the employee's parental rights or adoption. *J.M.E. v. Valley View Agri Sys.*, 2016 Ark. App. 531, 505 S.W.3d 211 (2016).

Because of countless possibilities that may occur in the future with regard to parents and their children, the Legislature provided courts with a clear directive in subsection (h) of this section, stating all questions of dependency shall be determined at the time of the injury. This directive is simple and unambiguous. Dependency is determined at the time of injury. *J.M.E. v. Valley View Agri Sys.*, 2016 Ark. App. 531, 505 S.W.3d 211 (2016).

Beneficiaries.

One statute only provides the maximum amount of money an employer must pay as compensation for an employee's

work-related death, but the statute is silent on whether a credit for good-faith, but ultimately mistaken, payments may be given; because the widow was not her husband's dependent, the money the employer paid her could not be counted as weekly benefits or compensation, and the payments did not accrue as a credit against the employer's responsibility to the Fund. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Widow had the burden to establish facts showing dependency on her husband before being entitled to benefits. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Widow did not have a statutorily required expectation of support from her husband when he died, as she could not say with certainty that they would have reconciled had he not died, and she had not withdrawn the divorce papers and she had removed him from her phone plan and dropped his life and health insurance; the court affirmed the denial of benefits. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Whether the widow was actually dependent on her husband when he died was a fact question. *Royal v. Bypass Diesel &*

Wrecker, Inc., 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Substantial evidence supported the decision that the widow was not actually dependent on her husband when he died, as she was working full time to support herself, she lived apart from her husband and had filed for divorce without asking for support, and his monthly contributions were between \$200 and \$300, which were insufficient. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

In a workers' compensation case, there was an error in giving preference to a deceased employee's wife as the widow, rather than apportioning the benefits to her and the children as a class where the number of dependent children exceeded the amount payable. Because there was not enough money to pay a widow a 35 percent share and each dependent child a 15 percent share, each member of the class could have been paid an equal share, or a determination of beneficiaries could have been made. *Death & Permanent Total Disability Trust Fund v. Myers*, 2014 Ark. App. 102 (2014).

—Partial Dependency.

Denial of partial dependent benefits to a widow was proper because she had no reasonable expectation of support from

her deceased husband; the widow only received occasional support from her husband in the 10 years after their separation, and testimony otherwise was not found to be credible. *Moss v. Rogers Logging Co.*, 2014 Ark. App. 277 (2014).

Termination of Parental Rights.

Because the undisputed facts established that two minor children were, in fact, dependent on the deceased employee, their biological father, at the time of the compensable injury, and there were no circumstances within the Workers' Compensation Law terminating their dependency status, the Workers' Compensation Commission erred in denying the children's claim for survivor benefits based on the termination of the biological father's parental rights and adoption of the children. *J.M.E. v. Valley View Agri Sys.*, 2016 Ark. App. 531, 505 S.W.3d 211 (2016).

“Wholly and Dependent.”

In a workers' compensation case, a deceased employee's stepchildren were properly found to be dependent for purpose of receiving death benefits where the employee had been married to his current wife for two years, the stepchildren resided with them, and his earnings were used to support the stepchildren. *Death & Permanent Total Disability Trust Fund v. Myers*, 2014 Ark. App. 102 (2014).

11-9-528. Employer records.

(a) Every employer shall keep a record with respect to any injury to an employee.

(b) The record shall contain such information of disability or death with respect to the injury as the Workers' Compensation Commission may by rule require.

(c) The record shall be available for inspection by the commission or by any state authority at such time and under such conditions as the commission may by rule prescribe.

History. Init. Meas. 1948, No. 4, § 33, Acts 1949, p. 1420; A.S.A. 1947, § 81-1333; Acts 2019, No. 315, § 795.

Amendments. The 2019 amendment deleted “or regulation” following “rule” in (b) and (c).

11-9-529. Employer reports.

CASE NOTES

Cited: *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

SUBCHAPTER 6 — OCCUPATIONAL DISEASE

SECTION.

11-9-601. Compensation generally —
Definition. [Effective from
March 11, 2020, and until
May 1, 2023.]

Effective Dates. Acts 2021, No. 353, § 4, provided: "Retroactivity. Sections 2 and 3 of this act apply to workers' compensation claims accruing on or filed on and after March 11, 2020."

Acts 2021, No. 353, § 5, provided: "Temporary legislation. This act expires on May 1, 2023, unless extended by the General Assembly."

Acts 2021, No. 353, § 6: Mar. 15, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations creates uncertainty for employees and employers in Arkansas, causing businesses to remain closed and unemployment for Arkansans to increase causing financial concerns for both employees and employers; that protecting employees and employers in Arkansas from the threat of coronavirus 2019 (COVID-19) or of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mu-

tations and from the impact on employment can encourage businesses to stay open, provide protection for employees returning to work, and thereby reduce unemployment for Arkansans; and that this act is immediately necessary because employees and employers need protection from the threat of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and from the impact felt on businesses in Arkansas in order to remain open, return to work, and be able to conduct business in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

**11-9-601. Compensation generally — Definition. [Effective from
March 11, 2020, and until May 1, 2023.]**

(a) Where an employee suffers from an occupational disease as defined in this subchapter and is disabled or dies as a result of the disease and where the disease was due to the nature of the occupation or process in which he or she was employed within the period previous to his or her disablement as limited in subsection (g) of this section, then the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disablement or death were caused by injury, except as otherwise provided in this subchapter.

(b) No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself or herself in writing as not having previ-

ously been disabled, laid off, or compensated in damages or otherwise, because of the disease.

(c)(1) Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death.

(2) The reduction in compensation is to be effected by reducing the number of weekly or monthly payments or the amounts of the payments, as under the circumstances of the particular case may be for the best interest of the claimant.

(d) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased which, under the provisions of this chapter, would give right to compensation arose subsequent to the beginning of the first compensable disability except to afterborn children of a marriage existing at the beginning of the disability.

(e)(1)(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means a disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease shall be established by a preponderance of the evidence.

(2) Compensation shall not be payable for any contagious or infectious disease unless contracted in the course of employment in or immediate connection with a hospital or sanatorium in which persons suffering from that disease are cared for or treated.

(3)(A) Except as applicable to coronavirus 2019 (COVID-19) or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations, compensation shall not be payable for any ordinary disease of life to which the general public is exposed.

(B) Coronavirus 2019 (COVID-19) or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations may be established as an occupational disease if all requirements for occupational diseases provided by law are established by the claimant, including the requirements stated in subdivisions (e)(1)(A) and (B) of this section, for the exception provided under subdivision (e)(3)(A) of this section to apply.

(f)(1) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease and the carrier, if any, on the risk when the employee was last injuriously exposed under the employer shall be liable.

(2) The amount of the compensation shall be based upon the average weekly wage of the employee when last injuriously exposed under the employer, and the notice of injury and claim for compensation, as required pursuant to this subchapter, shall be given and made to the employer.

(g)(1) An employer shall not be liable for any compensation for an occupational disease unless:

(A) The disease is due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his or her employment. This includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his or her employment;

(B) Disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment; or

(C) In case of death, death follows continuous disability from the disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in this subchapter and results within seven (7) years after the last exposure.

(2) However, in case of a diseased condition caused by exposure to X rays, radioactive substances, or ionizing radiation only, the limitations expressed do not apply.

History. Init. Meas. 1948, No. 4, § 14, Acts 1949, p. 1420; Acts 1963, No. 539, §§ 1, 2; 1975 (Extended Sess., 1976), No. 1227, § 11; A.S.A. 1947, § 81-1314; reen. Acts 1987, No. 1015, § 11; Acts 2001, No. 1281, § 1; 2021, No. 353, § 3.

A.C.R.C. Notes. Acts 2021, No. 353, § 1, provided: "Legislative intent.

"(a) It is the intent of the General Assembly to clarify and provide sufficient recourse under the Workers' Compensation Law, § 11-9-101 et seq., for employees to receive workers' compensation benefits during the coronavirus 2019 (COVID-19) outbreak.

"(b) This act is intended to be retroactive to March 11, 2020, and to remain in effect for claims filed until May 1, 2023, for the purposes of providing coverage to employees for illness or injury sustained

as a result of the coronavirus 2019 (COVID-19) outbreak."

Publisher's Notes. For text of section effective before March 11, 2020, and after May 1, 2023, see the bound volume.

Amendments. The 2021 amendment substituted "shall" for "must" in (e)(1)(B); substituted "Compensation shall not" for "No compensation shall" in (e)(2); rewrote (e)(3); and made stylistic changes.

Effective Dates. Acts 2021, No. 353, § 4, provided: "Retroactivity. Sections 2 and 3 of this act apply to workers' compensation claims accruing on or filed on and after March 11, 2020."

Acts 2021, No. 353, § 5, provided: "Temporary legislation. This act expires on May 1, 2023, unless extended by the General Assembly."

CASE NOTES

Exclusivity.

Circuit court properly dismissed an estate's wrongful-death and survival action against a decedent's employer on the ground that the claims fell within the exclusive-remedy provision of the Workers' Compensation Law because the

claims were within the coverage formula of the law, even though the decedent was ultimately denied recovery due to his asbestos claim being time-barred under the law. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

SUBCHAPTER 7 — PROCEEDINGS BEFORE WORKERS' COMPENSATION COMMISSION

SECTION.

11-9-703. Preliminary conference procedure.

SECTION.

11-9-705. Nature of proceedings generally.

11-9-701. Notice of injury or death.

CASE NOTES

ANALYSIS

Employer's Knowledge.
Sufficiency.

Employer's Knowledge.

Worker did not give formal notice, as required by this section, until September 2012, and the Workers' Compensation Commission did not err in finding that the worker did not prove by a preponderance of the evidence that the employer knew that her injury was work-related before the form was filed; therefore, the start date of the worker's benefits was September

2012, rather than February 2012. *A.E.R.T., Inc. v. Estrada*, 2016 Ark. App. 604, 508 S.W.3d 906 (2016).

Sufficiency.

Workers' Compensation Commission did not err in finding sufficient evidence that a claimant imparted notice of his work-related injury to his employer where the Commission found the claimant to be credible, and it relied on his testimony that he reported the injury to three technical assistants, his supervisor, and the human-resources representative. *St. Jean Indus. v. Ezell*, 2016 Ark. App. 516, 504 S.W.3d 679 (2016).

11-9-702. Filing of claims.

CASE NOTES

ANALYSIS

Statute of Limitations.
—Additional Compensation.
—Claim Barred.
—Claim Not Barred.
—Timeliness.
—Tolling the Statute.
Time of Injury.

Statute of Limitations.

Company was entitled to a writ of prohibition, because the lung disease and silicosis claim was covered by the Work-

ers' Compensation Law, and the circuit court lacked jurisdiction to determine whether the claimant's alleged disease from his exposure at home was covered under the Law; the time of disablement was within three years of his last injurious exposure, and the claimant failed to file his claim within the one-year limitation period. *Porocel Corp. v. Circuit Court of Saline County*, 2013 Ark. 172 (2013).

Statute of repose creates a substantive right to be free from liability after a legislatively determined period of time, and subdivision (a)(2)(B) of this section repre-

sents a policy-driven, legislative judgment to shield an employer from claims that arise three years after the last injurious exposure; coupled with the exclusive-remedy provision, it was not the intent to absolve an employer of liability after a period of time only to subject the employer to liability in tort after that period. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

Circuit court properly dismissed an estate's wrongful-death and survival action against a decedent's employer on the ground that the claims fell within the exclusive-remedy provision of the Workers' Compensation Law because the claims were within the coverage formula of the law, even though the decedent was ultimately denied recovery due to his asbestos claim being time-barred under the law. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

Where the deceased employee had retired from his employment in 1995 but was not diagnosed with mesothelioma until 2012 and thus his workers' compensation claim was barred by subdivision (a)(2)(B) of this section, his estate's civil action against the employer for wrongful death also failed; because the Workers' Compensation Law covered occupational diseases and asbestos-related claims, the exclusive-remedy provision applied to bar the civil action. *Hendrix v. Alcoa, Inc.*, 2016 Ark. 453, 506 S.W.3d 230 (2016).

The Arkansas Supreme Court follows a strict-construction interpretation of this section. *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640 (2020).

This section barred a claim for additional medical benefits where the claimant never formally filed a Form AR-C claim for compensation for additional benefits after his injury, and the ALJ's pre-hearing order did not contain the specific language required by subsection (c) of this section. *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640 (2020).

—Additional Compensation.

Workers' Compensation Commission did not err in finding that subsection (b) of this section did not bar a worker's claim for additional benefits where the date of his last injections for left carpal tunnel syndrome was well within one year of the date the worker made his claim for additional benefits requesting release surgery.

Nucor Yamato Steel Co. v. Kennedy, 2017 Ark. App. 126, 513 S.W.3d 895 (2017).

While claimant's medical treatment continued during a five-year gap in indemnity payments, the fact remained that the indemnity payments stopped for a period of five years before being resumed, and claimant failed to file any claim for benefits during that time; thus, claimant's claim for indemnity payments was barred under subdivision (b)(1) of this section by his failure to raise the claim within the appropriate period of time after his former employer ceased paying indemnity benefits, and the employer's gratuitous payment of indemnity benefits did not revive the statute of limitations. *Kirk v. Cent. States Mfg.*, 2018 Ark. App. 78, 540 S.W.3d 714 (2018).

Under a plain reading of subsection (b) of this section, a workers' compensation claimant's application for additional medical benefits was not time-barred where there was no authority for the employer unilaterally imposing a pre-authorization condition on the benefits it provided for a compensable injury, the Commission's findings that the authorized treating physician's continued treatment in 2017 for claimant's right leg pain was reasonable and necessary and was sufficiently related to her right knee injury were supported by substantial evidence, and the claimant filed an application for additional benefits within one year of the 2017 treatment. *Lavaca Sch. Dist. v. Hatfield*, 2019 Ark. App. 360, 584 S.W.3d 262 (2019).

—Claim Barred.

When the injured employee filed his claim for additional workers' compensation benefits within the statute of limitations but the form named the incorrect employer and the employee then submitted a corrected claim form naming the correct employer one day after the limitations period expired, the employee's claim for additional benefits was barred by the statute of limitations in this section. *Farris v. Express Servs., Inc.*, 2019 Ark. 141, 572 S.W.3d 863 (2019).

—Claim Not Barred.

Substantial evidence supported the decision that the claimant's bilateral carpal tunnel syndrome was a compensable injury and the claim was not barred by the

statute of limitations; the claimant's gradual-onset injury did not become apparent to the claimant until October 2013, when she reported work-related symptoms to her supervisor, she had been diagnosed with severe bilateral carpal tunnel syndrome as she performed repetitive gripping at work, and she filed her workers' compensation claim no later than March 2014, and nothing indicated that the Workers' Compensation Commission used the manifestation approach that had previously been rejected by the court. *La-Z-Boy Mfg., Inc. v. Bruner*, 2016 Ark. App. 117, 484 S.W.3d 700 (2016).

Workers' compensation claim was not time-barred even though it was filed more than two years after the date of the injury where the employer had told the employee he did not have workers' compensation insurance, the employer had actual notice of the injury on the date of the injury, and the employer's own testimony showed that he failed to post notice that he had subsequently obtained workers' compensation insurance or notify the employee of the same after the injury. *Graves v. Hopper*, 2018 Ark. App. 193, 547 S.W.3d 448 (2018).

—Timeliness.

According to the administrative law judge, the only time the claimant could prove mold to be present in her workplace was in August 2008, and she was exposed from that time until September 2008, when all employees were removed from the building, and thus as of October 2008, the claimant's exposure to mold must have ended; the claimant would have had until October 2010 to file a claim, but as her claim was filed in 2011, it was time-barred, and the decision was affirmed. *Livermore v. Madison County*, 2014 Ark. App. 617, 447 S.W.3d 130 (2014).

—Tolling the Statute.

Worker's generic Form AR-C was insufficient to toll the limitations period in subsection (b) of this section where she did not specifically list that she suffered neck and shoulder injuries, chose to leave her claim for injuries open-ended, and by checking all the boxes on the form, she provided no information about the type of claim asserted. *Wal-Mart Assocs. v. Armstrong*, 2017 Ark. App. 175, 516 S.W.3d 310 (2017).

Letter that gave the commission claim number, referenced a denial of benefits, requested benefits, and asked for a hearing constituted a claim for benefits and tolled the statute of limitations; while it was not on a Commission-designated claim form (AR-C), there is no requirement in the Workers' Compensation Law that a claim for benefits be made on any particular form and the fact that there is no requirement to use a designated claim form indicates the legislature did not intend to create such a limitation. *Ark. Dep't of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924 (2020).

Time of Injury.

Although the claimant claimed that her last injurious mold exposure was in June 2011 because mold testing showed that mold levels were at acceptable levels, the statute is worded in terms of injurious exposure, and acceptable levels of mold would not be comparable to injurious exposure; the administrative law judge explained why he gave no real weight to the testing the claimant offered, and the decision that the claim was time-barred was affirmed. *Livermore v. Madison County*, 2014 Ark. App. 617, 447 S.W.3d 130 (2014).

Cited: *Estrada v. AERT, Inc.*, 2014 Ark. App. 652, 449 S.W.3d 327 (2014).

11-9-703. Preliminary conference procedure.

The Workers' Compensation Commission is authorized and directed to promulgate appropriate rules to establish and implement, for claims with respect to injuries occurring on or after January 1, 1987, a preliminary conference procedure designed to accomplish the following objectives:

(1) To provide the claimant an opportunity to confer with a legal advisor on the staff of the commission to be advised of his or her rights under this chapter and to ensure that the rights are protected. The

conference shall be held in the county where the accident occurred, if the accident occurred in this state, unless otherwise agreed to between the parties, or otherwise directed by the commission;

(2) To provide an opportunity for, but not to compel, a binding settlement of some or all the issues present at the time;

(3) To facilitate the resolution of issues without the expense of litigation or attorney's fees for either party;

(4)(A)(i) To authorize the legal advisor to approve compromise settlements entered into at or as a result of the preliminary conference and those joint petition settlements entered into pursuant to § 11-9-805.

(ii) Provided, however, the same legal advisors shall not both advise the claimant and approve the joint petition.

(B) The purpose and intent of this section is to affirm the duty of the commission to provide legal assistance, thereby reducing litigation and workers' compensation costs; and

(5) No moneys appropriated by Acts 1987, No. 1046, or any other act shall be expended to fund preliminary conferences held pursuant to § 11-9-102, § 11-9-205, §§ 11-9-501 — 11-9-503, § 11-9-517, § 11-9-521, § 11-9-522, § 11-9-527, §§ 11-9-701 — 11-9-704, § 11-9-715, § 11-9-802, or § 11-9-804, other than in the county where the accident occurred, if the accident occurred in this state, the county of the claimant's residence, or such other county as agreed to by the parties.

History. Acts 1986 (2nd Ex. Sess.), No. 10, § 11; A.S.A. 1947, § 81-1323.1; Acts 1993, No. 796, § 28; 2003, No. 227, § 10; 2019, No. 315, § 796.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the introductory language.

11-9-704. Proceedings on claims.

CASE NOTES

ANALYSIS

Determination.

—Findings of Impairment.
Evidence.

—Credibility.

—Findings of Impairment.
"Physical Impairment".

Determination.

Because a determination of permanent impairment for a claimant's reflex sympathetic dystrophy (RSD) was premature, reversal of the Workers' Compensation Commission's decision that the claimant sustained a zero-percent impairment rating for the claimant's RSD and remand for further proceedings was appropriate. *Walker v. Fresenius Med. Care Holding, Inc.*, 2014 Ark. App. 322, 436 S.W.3d 164 (2014).

—Findings of Impairment.

Workers' Compensation Commission rejected the doctor's assignment of an impairment rating upon the finding that she relied solely on the presence of an annular tear, and this finding was reversed in light of the doctor's deposition testimony, and the matter was remanded for further findings on the issue of impairment. *Thompson v. Mt. Home Good Samaritan Vill.*, 2014 Ark. App. 493, 442 S.W.3d 873 (2014).

Workers' Compensation Commission did not err in assigning the claimant a 50% permanent anatomical-impairment rating to her lower left extremity due to her total knee replacement. That issue was ripe for consideration as the claimant had reached maximum medical improvement; and the impairment rating was supported by substantial evidence as the

administrative law judge relied on the medical evidence provided in a report by the orthopedic surgeon and cross-referenced that information with the American Medical Association Guides to the Evaluation of Permanent Impairment. Ark. Dep't of Human Servs. v. Shields, 2018 Ark. App. 247, 548 S.W.3d 208 (2018).

Evidence.

In a workers' compensation case, substantial evidence supported a four-percent impairment rating for a compensable right shoulder injury under § 11-9-522(g)(1)(A) based on the testimony of a treating physician; the Workers' Compensation Commission was not required to award an impairment rating recommended by the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1993). Greene v. Cockram Concrete Co., 2012 Ark. App. 691 (2012).

Workers' Compensation Commission properly denied the claimant's claim for permanent partial impairment because she failed to establish through her own testimony or other means that either the annular tear or muscle spasms supported the existence of a permanent impairment causally related to her 2009 injury. O'Guinn v. Little River Mem'l Hosp., 2013 Ark. App. 593, 430 S.W.3d 150 (2013).

Worker had bilateral quadriceps tendon tears, a doctor assigned a disability rating of 35 and 32 percent to the right and left lower extremities respectively, and the Workers' Compensation Commission accepted the ratings and found that the worker had proven her compensable injuries to be the major cause of impairment; the Commission exercised its duty to assess the evidence to make a finding of permanent impairment, and substantial evidence supported this decision. Firestone Bldg. Prods. v. Hopson, 2013 Ark. App. 618, 430 S.W.3d 162 (2013).

Workers' Compensation Commission found a compensable injury, as the worker was directly advancing the company's interests at the time of the incident and the company benefitted from the work the worker performed, and it was clear that the Commission's decision to reverse was based on issues of credibility alone; because questions of credibility were the exclusive province of the Commission, the court was foreclosed from determining the

weight and credibility to be accorded to the testimony, and the court affirmed. Hill v. Treadaway, 2014 Ark. App. 185, 433 S.W.3d 285 (2014).

—Credibility.

There was no violation of a workers' compensation claimant's due process rights where it was within the Workers' Compensation Commission's province to reconcile conflicting evidence, determine the true facts, and translate into findings of fact only those portions of the testimony that it deemed worthy of belief. Wright v. Conway Freight, 2014 Ark. App. 451, 441 S.W.3d 45 (2014).

—Findings of Impairment.

Substantial evidence supported the findings and conclusion of the Workers' Compensation Commission that the worker suffered a 40% permanent impairment to his wrist; the Commission interpreted pin-prick test results to reflect the partial wrist denervation mentioned in the surgical report and concluded that the rating corresponded with the median nerve distribution, and implicit in the Commission's decision was a finding that the claimant credibly testified that the doctor had manipulated his hand during the examination. Emergency Ambulance Servs. v. Pritchard, 2016 Ark. App. 366, 498 S.W.3d 774 (2016).

Substantial evidence supported the Workers' Compensation Commission's decision that a claimant was entitled to a 29% permanent impairment rating to the body as a whole for a brain injury because the severity of the claimant's skull fractures and the presence of pneumocephalus on the claimant's CT scan, coupled with the testimony of a clinical psychologist and a board-certified neurologist that the claimant suffered a brain injury, established that the claimant did, in fact, suffer a compensable injury to the brain. Multi-Craft Contrs., Inc. v. Yousey, 2018 Ark. 107, 542 S.W.3d 155 (2018).

Workers' Compensation Commission's finding of a 37% impairment rating was affirmed; although a doctor opined that claimant's workplace injury was only 50% caused by the compensable injury, the claimant testified that he had remained quite physically active prior to the accident despite having polio, he had been able to move around with a right-leg brace

and a crutch, but after the accident he was confined to a wheelchair or scooter. Ark. State Military Dep't v. Jackson, 2019 Ark. App. 92, 568 S.W.3d 811 (2019).

Workers' Compensation Commission's decision to award an injured employee an 11% impairment rating to his body as a whole and 10% in wage-loss disability was supported by substantial evidence; the Commission considered all the evidence and testimony presented, the decision was supported by objective medical findings, and the Commission clearly stated that it found a neurologist's conclusions to be supported by the record and that his conclusions were entitled to more evidentiary weight than the opinions of various other doctors. Tempworks Mgmt. Servs. v. Jaynes, 2020 Ark. App. 70, 593 S.W.3d 519 (2020).

"Physical Impairment".

Substantial evidence supported the Workers' Compensation Commission's finding that the claimant failed to prove that she was entitled to permanent partial-disability benefits given her preexisting lumbar condition, and no physician had issued her an impairment rating. Willis v. Ark. Dep't of Corr., 2021 Ark. App. 50, 616 S.W.3d 679 (2021).

Cited: Davis v. Action Mech., 2012 Ark. App. 515 (2012); Lambert v. LQ Mgmt., L.L.C., 2013 Ark. 114, 426 S.W.3d 437 (2013); Hosey v. Wal-Mart Assocs., 2016 Ark. App. 189, 487 S.W.3d 837 (2016); J.M.E. v. Valley View Agri Sys., 2016 Ark. App. 531, 505 S.W.3d 211 (2016); Birtcher v. Mena Water Utils., 2017 Ark. App. 210, 518 S.W.3d 707 (2017).

11-9-705. Nature of proceedings generally.

(a) CONDUCT OF HEARING OR INQUIRY.

(1) In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner as will best ascertain the rights of the parties.

(2) Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made, or the hearing conducted, may be received in evidence and may, if corroborated by other evidence, be sufficient to establish the injury.

(3) When deciding any issue, administrative law judges and the commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of evidence.

(b) HEARINGS TO BE PUBLIC — RECORDS.

(1)(A) Hearings before the commission shall be open to the public and shall be stenographically reported, and the commission is authorized to contract for the reporting of the hearings.

(B) The commission shall by rule provide for the preparation of a record of all hearings and other proceedings before it.

(2) However, the commission shall not be required to stenographically report or prepare a record of joint petition hearings. Instead, the administrative law judge or legal advisor shall tape the hearing at no cost to the parties.

(c) INTRODUCTION OF EVIDENCE.

(1)(A) All oral evidence or documentary evidence shall be presented to the designated representative of the commission at the initial hearing on a controverted claim, which evidence shall be stenographically reported.

(B) Each party shall present all evidence at the initial hearing.

(C)(i) Further hearings for the purpose of introducing additional evidence will be granted only at the discretion of the hearing officer or commission.

(ii) A request for a hearing for the introduction of additional evidence must show the substance of the evidence desired to be presented.

(2)(A) Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the commission copies of the written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of the hearing. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, notify in writing the opposing party and the commission of the name and address of the physicians proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of their anticipated testimony.

(B) If the opposing party desires to cross-examine the physician, he or she should notify the party who submits a medical report to him or her as soon as practicable, in order that he or she may make every effort to have the physician present for the hearing.

(3) A party failing to observe the requirements of this subsection may not be allowed to introduce medical reports or testimony of physicians at a hearing, except in the discretion of the hearing officer or the commission.

(4) The time periods may be waived by the consent of the parties.

(d) Expert testimony shall not be allowed unless it satisfies the requirements of Federal Rule of Evidence 702 with annotations and amendments, that is, *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

History. Init. Meas. 1948, No. 4, § 27, Acts 1949, p. 1420; Acts 1981, No. 290, § 11; A.S.A. 1947, § 81-1327; Acts 1993, No. 796, § 30; 2001, No. 1281, § 4; 2019, No. 315, § 797.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (b)(1)(B).

CASE NOTES

ANALYSIS

Evidence.

- Additional Evidence.
- Specific Cases.
- Sufficiency.

Evidence.

—Additional Evidence.

There was no statutory requirement that a benefits claimant request a hearing on the introduction of additional evidence or that the Workers' Compensation Commission conduct a hearing before allowing such. Therefore, the Commission did not abuse its discretion in admitting newly generated medical records as additional evidence in this case; the records were not cumulative and they were relevant, particularly with regards to an evaluation of the claimant's left-knee pain and resultant surgery. *Get Rid of It Ark. v. Graham*, 2016 Ark. App. 88 (2016).

—Specific Cases.

Workers' Compensation Commission did not arbitrarily disregard the treating physician's opinion, but rather, it was just not given as much weight as the opinion of the doctor who prepared the independent medical examination report; the Commission's reliance on the video surveillance of the employee carrying grocery sacks showed that the choice of the doctor's opinion over that of the treating physician was based on the record as a whole and on a determination of the employee's credibility. *Stoker v. Thomas Randal Fowler, Inc.*, 2017 Ark. App. 594, 533 S.W.3d 596 (2017).

Workers' Compensation Commission properly denied an employee's claim for additional medical testing and treatment because it did not abuse its discretion in admitting a doctor's report of the independent medical examination he performed. The Commission was not bound by technical or statutory rules of evidence or by technical or formal rules of procedure and was empowered to allow whatever evidence it saw fit into the record. *Stoker v.*

Thomas Randal Fowler, Inc., 2017 Ark. App. 594, 533 S.W.3d 596 (2017).

—Sufficiency.

Workers' Compensation Commission's denial of the worker's claim for permanent total disability for a back injury and the finding that he sustained only a 10 percent wage loss turned on the Commission's assessment of witness credibility and the weight of the evidence, and the denial had a substantial basis, but the wage-loss issue was remanded in light of the reversal of the impairment rating; the Commission did not find that the worker was motivated to return to the workforce, and the Commission considered his age, education, work experience, and the nature of the injury. *Thompson v. Mt. Home Good Samaritan Vill.*, 2014 Ark. App. 493, 442 S.W.3d 873 (2014).

Appellants' argument asked the court to find appellee's testimony not credible and to believe certain medical reports over other medical evidence, but the Workers' Compensation Commission found that the evidence corroborated one doctor's opinion, and it was the Commission's duty to make credibility determinations; the court was foreclosed from determining the credibility of the testimony on appeal, and accordingly, substantial evidence supported the Commission's decision. *Waste Mgmt. v. Cook*, 2015 Ark. App. 159 (2015).

Workers' Compensation Commission's decision displayed a substantial basis for the denial of an employee's claim that a cyst and tendinitis constituted a compensable injury because the Commission found that the employee's job duties did not require her to engage in rapid repetitive motion; the employee's arguments regarding the cause of her cyst and tendinitis simply went to the weight of the evidence, a matter that the Commission decided against her. *Bennett v. Tyson Poultry, Inc.*, 2016 Ark. App. 479, 504 S.W.3d 653 (2016).

Cited: *Watkins v. United States Trucking, Inc.*, 2013 Ark. App. 444, 429 S.W.3d 308 (2013); *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767 (2016).

11-9-711. Finality of order or award — Review.**CASE NOTES****ANALYSIS**

Evidence.
Judicial Review.
—Scope.
Jurisdiction.

Evidence.

Employer's argument that the Workers' Compensation Commission relied on outside materials was rejected where the majority opinion affirmed and adopted the ALJ's opinion, which made no reference to nor gave any consideration to online sources. Ark. Dep't of Cmty. Corr. v. Barclay, 2017 Ark. App. 214, 518 S.W.3d 138 (2017).

Judicial Review.**—Scope.**

Workers' Compensation Commission exceeded its authority in concluding that

a firefighter had not sustained a brain injury or dysphasia where only the degree of impairment, not the existence of an injury, was in dispute. Bowmaster v. City of Jacksonville, 2016 Ark. App. 572, 507 S.W.3d 526 (2016).

Jurisdiction.

Arkansas Supreme Court denied the employer's motion to dismiss an estate's wrongful-death and survival action on the ground that the Supreme Court lacked jurisdiction because the estate did not appeal to the full commission the administrative law judge's jurisdictional statement, based on the parties' stipulation, that the "Arkansas Workers' Compensation Commission has jurisdiction of this claim"; the administrative law judge's decision became final under this section once it was not appealed. Hendrix v. Alcoa, Inc., 2016 Ark. 453, 506 S.W.3d 230 (2016).

11-9-713. Modification of awards.**CASE NOTES****ANALYSIS**

Grounds.
Stipulations.

Grounds.

Although the claimant and the employer stipulated to the compensation rates at the November 21, 2013, hearing, the Death and Permanent Total Disability Trust Fund was not yet joined as a party at that time, and therefore the Trust Fund was not bound by that stipulation. Thus, when the Trust Fund provided evidence to the Workers' Compensation Commission that the November 2013 rates were not supported by the claimant's wage records, it was not inappropriate for the Commis-

sion to modify the claimant's disability-wage rate in accordance with statutory authority. Ark. Dep't of Human Servs. v. Shields, 2018 Ark. App. 247, 548 S.W.3d 208 (2018).

Stipulations.

Employer and insurer were properly denied an overpayment credit because, when stipulating to a compensation rate, the employer and insurer should have known a worker's employment and wage history; thus, it was not an abuse of discretion to deny the request of the employer and insurer to withdraw the stipulation. Ark. Dep't of Corr. v. Jackson, 2019 Ark. App. 124, 571 S.W.3d 539 (2019).

11-9-714. Costs in proceedings brought without reasonable grounds.**CASE NOTES****Costs Imposed.**

Workers' Compensation Commission found that the claim was brought without reasonable grounds and was not well-grounded, and appellant did not argue why costs and fees were not to be imposed; furthermore, the finding that appellant violated this section and § 11-9-717 was

supported by substantial evidence, as appellant was repeatedly advised to research his claim, and appellees said they would seek sanctions, but still appellant proceeded with a claim that lacked merit, and thus the court affirmed. *Johnson v. United States Food Serv.*, 2013 Ark. App. 86 (2013).

11-9-715. Fees for legal services.**CASE NOTES****ANALYSIS**

Construction.

Appeal.

Authority to Award.

Claims Not Controverted.

Second Injury Fund.

Construction.

When the claimant did not receive any of the additional workers' compensation benefits awarded because of the offset required by § 11-9-411 of his disability retirement compensation, this section required the employer to pay the injured worker's one-half portion of the attorney's fees due from the workers' compensation benefits awarded. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

The General Assembly intended the attorney's fees awarded under § 11-9-715 to have priority over the offset provided for in § 11-9-411. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

Plain language of subdivision (a)(2)(B)(i) of this section provides that the attorney's fees awarded will be paid one-half (½) by the employer or carrier in addition to compensation awarded; and one-half (½) by the injured employee or dependents of a deceased employee out of compensation payable to them. The employee's half comes from the payable amount owed to the employee before any offset. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

To apply the offset statute, § 11-9-411, over the attorney's-fees statute, § 11-9-715, would defeat the purpose of the attorney's-fees statute and the worker's compensation laws and would ignore the statutory language. *Ark. Game & Fish Comm'n v. Gerard*, 2018 Ark. 97, 541 S.W.3d 422 (2018).

Appeal.

Because an appellate court upheld the Workers' Compensation Commission's denial of additional medical benefits to an employee, it also upheld its denial of attorney's fees to the employee. *Towler v. Tyson Poultry, Inc.*, 2012 Ark. App. 546, 423 S.W.3d 664 (2012).

Administrative law judge awarded the employee the maximum attorney's fee on the controverted indemnity benefits awarded; but as the Commission's decision did not mention the attorney's fee award, this issue was remanded. *Vann v. FedEx Freight, Inc.*, 2018 Ark. App. 353, 551 S.W.3d 432 (2018).

Authority to Award.

In an action for workers' compensation insurance benefits, the trial court had the authority to award attorney's fees where the insurer refused to withdraw its lien after the settlement agreement had been finalized and did not request a made-whole hearing until after the claimant's attorney filed a motion to dismiss the insurer from the lawsuit, causing the claimant to incur legal expenses to preserve the benefits he had been awarded and force the insurer to release its lien.

Liberty Mut. Ins. Co. v. Youngblood, 2020 Ark. App. 398, 609 S.W.3d 468 (2020).

Claims Not Controverted.

Workers' Compensation Commission properly found that the claimant failed to prove by a preponderance of the evidence that his attorney was entitled to an attorney's fee as part of the action before it because the attorney did not prove the claimant's entitlement to benefits upon which a fee would be due in the workers' compensation forum, and the claimant had not proved controversion. *Burton v. Chartis Claims, Inc.*, 2014 Ark. App. 47 (2014).

Second Injury Fund.

Strictly construing this section and § 11-9-716, it is clear that an award of lump-sum attorney's fees is not limited to employers. Therefore, the Arkansas Workers' Compensation Commission had the authority to award a lump-sum attorney's fee payable by a second injury fund under § 11-9-716, and an appellate court declined to overrule the decision in *Lewis v. Auto Parts & Tire Co., Inc.*, 104 Ark. App. 230, 290 S.W.3d 37 (2008); moreover, further findings of fact were not necessary. *Davis v. Action Mech.*, 2012 Ark. App. 515 (2012).

11-9-716. Lump-sum attorney's fees.

CASE NOTES

ANALYSIS

Construction.
Second Injury Fund.

Construction.

Plain language of this section authorizes the Workers' Compensation Commission to award lump sum attorneys' fees. No limitations are set forth because none were apparently intended. *Davis v. Action Mech.*, 2012 Ark. App. 515 (2012).

Second Injury Fund.

Strictly construing § 11-9-715 and this section, it is clear that an award of lump-

sum attorney's fees is not limited to employers. Therefore, the Workers' Compensation Commission had the authority to award a lump-sum attorney's fee payable by a second injury fund under this section, and an appellate court declined to overrule the decision in *Lewis v. Auto Parts & Tire Co., Inc.*, 104 Ark. App. 230, 290 S.W.3d 37 (2008); moreover, further findings of fact were not necessary. *Davis v. Action Mech.*, 2012 Ark. App. 515 (2012).

11-9-717. Attorney's signature.

CASE NOTES

Costs Imposed.

Workers' Compensation Commission found that the claim was brought without reasonable grounds and was not well-grounded, and appellant did not argue why costs and fees were not to be imposed; furthermore, the finding that appellant violated § 11-9-714 and this section was

supported by substantial evidence, as appellant was repeatedly advised to research his claim, and appellees said they would seek sanctions, but still appellant proceeded with a claim that lacked merit, and thus the court affirmed. *Johnson v. United States Food Serv.*, 2013 Ark. App. 86 (2013).

SUBCHAPTER 8 — PAYMENT

SECTION.

11-9-805. Joint petition for final settlement.

SECTION.

11-9-812. Incarceration of injured employee.

SECTION.

11-9-813. Deductibles.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-9-804. Lump-sum settlement.**CASE NOTES**

Cited: Davis v. Action Mech., 2012 Ark. App. 515 (2012).

11-9-805. Joint petition for final settlement.

(a)(1) Except as provided in subdivision (a)(2) of this section, upon petition filed by the employer or carrier and the injured employee requesting that a final settlement be had between the parties, the Workers' Compensation Commission shall hear the petition and take testimony and make investigations as may be necessary to determine whether a final settlement should be had.

(2)(A) If a claimant has been determined to be eligible for Medicare, the parties may petition the commission for a partial settlement of all issues other than future medical treatment.

(B) A partial settlement under subdivision (a)(2)(A) of this section is final concerning all issues except future medical treatment.

(b)(1)(A) If the commission decides that a final settlement award is in the best interests of the parties, the commission may order an award that is final concerning the rights of all the parties to the joint petition.

(B) After the commission enters an order with regard to any full settlement, the commission does not have jurisdiction over any claim for the same injury or any results arising from it.

(2)(A) If the commission decides that a partial settlement award is in the best interests of the parties, the commission may order an award that is final concerning the partial settlement of the rights of all the parties to the joint petition.

(B) After the commission enters an order with regard to any partial settlement, the commission does not have jurisdiction over

any claim for the same injury or any results arising from it other than claims for future medical expenses.

(c) If an employee has returned to work or agreed to return to work, the commission shall not approve a joint petition which has allotted moneys for vocational rehabilitation or any indemnity benefits in excess of that payable as an anatomical impairment as established by objective and measurable findings.

(d) If the commission denies the petition, the denial shall be without prejudice to either party.

(e) An appeal shall not lie from an order or award denying or approving a joint petition.

History. Init. Meas. 1948, No. 4, § 19, Acts 1949, p. 1420; Acts 1959, No. 167, § 1; A.S.A. 1947, § 81-1319; Acts 1993, No. 796, § 33; 2017, No. 1058, § 1.

Amendments. The 2017 amendment redesignated former (a) as (a)(1); added "Except as provided in subdivision (a)(2)

of this section" in (a)(1); added (a)(2); redesignated former (b)(1) as (b)(1)(A); rewrote (b)(1)(A); added (b)(1)(B); rewrote (b)(2); and, in (e), substituted "An appeal shall not" for "No appeal shall" and inserted "or approving".

CASE NOTES

Dual Employment.

This section was inapplicable because the company was not seeking a hearing on the merits of an employee's claim or a determination on any of the results of his claimed injuries; the only issue before the Workers' Compensation Commission was whether the company was the employee's special employer at the time of his injury and, therefore, immune from suit. *Pineda v. Manpower Int'l, Inc.*, 2017 Ark. App. 350, 523 S.W.3d 384 (2017).

Workers' Compensation Commission

correctly concluded that a joint-petition settlement between an employee and a temporary-employment agency did not deprive it of its jurisdiction to determine whether an employee-employer relationship existed between the employee and a company under the dual-employment doctrine; the company was not a party to the settlement, and the Commission had exclusive, original jurisdiction to determine the employee-employer relationship. *Pineda v. Manpower Int'l, Inc.*, 2017 Ark. App. 350, 523 S.W.3d 384 (2017).

11-9-807. Credit for compensation or wages paid.

CASE NOTES

ANALYSIS

Credits.
Evidence.
Vacation.

Credits.

One statute only provides the maximum amount of money an employer must pay as compensation for an employee's work-related death, but the statute is silent on whether a credit for good-faith, but ultimately mistaken, payments may be given; because the widow was not her husband's dependent, the money the em-

ployer paid her could not be counted as weekly benefits or compensation, and the payments did not accrue as a credit against the employer's responsibility to the Fund. *Royal v. Bypass Diesel & Wrecker, Inc.*, 2014 Ark. App. 90, 432 S.W.3d 139 (2014).

Workers' Compensation Commission clearly erred in denying an employer a credit for wages paid an employee during a period of disability because (1) the Commission found "lost wages" paid in a settlement were "full wages," (2) the parties stipulated to the employee's maximum weekly rate, and (3) an administra-

tive law judge's finding of the employee's average weekly wage, exceeding that maximum weekly rate, was not contested, so the employee was disqualified from benefits during the period the employee received "full wages." *Advanced Portable X-Ray, LLC v. Parker*, 2014 Ark. App. 548, 444 S.W.3d 398 (2014).

Evidence.

Workers' Compensation Commission erred by awarding the employer a credit for money it paid the employee in an EEOC mediation settlement because the Commission provided no explanation of how the settlement proceeds described therein as lost wages equated to full wages. *Parker v. Advanced Portable X-Ray, LLC*, 2014 Ark. App. 11, 431 S.W.3d 374 (2014).

Vacation.

"Full wages" under subsection (b) of this section refers to the money rate paid to recompense services rendered, and vacation pay is that sum received as an employee benefit when no services are rendered. Therefore, in a workers' compensation case, a benefits claimant was entitled to receive temporary-total disability benefits because he did not receive his full wages during his period of disability where he received vacation pay; vacation pay was the sum received as an employee benefit when no services were rendered. *St. Edward Mercy Med. Ctr. v. Howard*, 2012 Ark. App. 673, 424 S.W.3d 881 (2012).

11-9-812. Incarceration of injured employee.

(a)(1) When any person who receives workers' compensation benefits is incarcerated in an institution under the control of the Division of Correction, the inmate's spouse or, if no spouse, the inmate's minor dependent children, may petition the Workers' Compensation Commission to award to the spouse or minor dependent children the inmate's workers' compensation weekly disability benefits for the period of the claimant's incarceration.

(2) If the inmate has no surviving spouse or surviving minor dependent children, the division may petition the commission to award to the division the amount of the workers' compensation weekly disability benefits for the period of the claimant's incarceration necessary to reimburse the division for the cost of incarcerating the inmate.

(b) The commission shall promulgate rules necessary for the implementation of this section.

History. Acts 1993, No. 372, §§ 1, 2; 2019, No. 315, § 798; 2019, No. 910, § 697.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 910 substituted "Division of Correction" for "Department of Correction" in (a)(1).

11-9-813. Deductibles.

(a)(1) Upon approval by the Insurance Commissioner, and following the adoption of such rules as the Insurance Commissioner deems necessary and advisable, each insurer issuing a policy under this chapter shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under this chapter.

(2) Deductible amounts offered shall be fully disclosed to the prospective policyholder in writing in the amount of one hundred dollars (\$100), two hundred dollars (\$200), three hundred dollars (\$300), four hundred dollars (\$400), and five hundred dollars (\$500), or increments of five hundred dollars (\$500), up to a maximum of two thousand five hundred dollars (\$2,500) per compensable claim, or in such other amounts as may be set by the Insurance Commissioner.

(3) The policyholder exercising the deductible option shall choose only one (1) deductible amount.

(b) Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under this chapter on or after approval by the Insurance Commissioner, unless an insured employer and insurer agree to renegotiate a workers' compensation policy in effect on that date so as to include a provision allowing for a deductible.

(c)(1) If the policyholder exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for benefits paid for each compensable claim of work injury suffered by an employee.

(2) The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by this chapter and then seek reimbursement from the insured employer for the applicable deductible amount.

(3) The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

(d) If the Insurance Commissioner determines it to be feasible, and under such rules as he or she may adopt, premium reduction for deductibles may be determined before the application of any experience modification, premium surcharge, or premium discounts, and, to the extent that an employer's experience rating or safety record is based on benefits paid, money paid by the insured employer under a deductible as provided in this section may not be included as benefits paid so as to harm the experience rating of the employer.

(e) This section shall not apply to employers who are approved to self-insure against liability for workers' compensation or group self-insurance funds for workers' compensation.

History. Acts 1993, No. 796, § 34; deleted "and regulations" following "rules" 2019, No. 315, §§ 799, 800. in (a)(1) and (d).

Amendments. The 2019 amendment

SUBCHAPTER 9 — WORKERS' COMPENSATION PRIVATE SECTOR SELF-INSURER GUARANTY FUNDS

SECTION.

11-9-902. Rules.

11-9-902. Rules.

The Workers' Compensation Commission shall promulgate rules to implement this subchapter.

History. Acts 1991, No. 756, § 9; 2019, substituted "Rules" for "Regulations" in No. 315, § 801. the section heading and in the text.

Amendments. The 2019 amendment

SUBCHAPTER 10 — REVISION OF WORKERS' COMPENSATION LAWS**11-9-1001. Legislative declaration.****CASE NOTES****Common-law Remedies for Retaliation.**

By enacting § 16-118-107, the General Assembly did not intend to revive the individual cause of action for common-law remedies for retaliation under Arkansas workers' compensation law which it expressly annulled at § 11-9-107. Lambert

v. LQ Mgmt., L.L.C., 2013 Ark. 114, 426 S.W.3d 437 (2013).

Cited: J.M.E. v. Valley View Agri Sys., 2016 Ark. App. 531, 505 S.W.3d 211 (2016); Birtcher v. Mena Water Utils., 2017 Ark. App. 210, 518 S.W.3d 707 (2017).

CHAPTER 10**DIVISION OF WORKFORCE SERVICES LAW****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. DEFINITIONS.
3. ADMINISTRATION AND ENFORCEMENT.
4. EMPLOYER COVERAGE.
5. BENEFITS GENERALLY.
6. SHARED WORK PLANS.
7. CONTRIBUTIONS.
8. UNEMPLOYMENT COMPENSATION FUND.
9. DIVISION OF STATE NEW HIRE REGISTRY.
10. UNEMPLOYMENT TRUST FUND FINANCING ACT OF 2011.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 11-10-101. Title.
- 11-10-106. Penalties.
- 11-10-108. Protection of rights and benefits — Limitation of fees.
- 11-10-109. Protection of rights and benefits — Assignment, pledge, or encumbrance of benefits prohibited.

SECTION.

- 11-10-110. Protection of rights and benefits — Exception for withholding child support — Definitions.
- 11-10-111. Protection of rights and benefits — Exception for withholding food stamp overages — Definition.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-10-101. Title.

This chapter shall be known and may be cited as the "Division of Workforce Services Law".

History. Acts 1941, No. 391, § 1; 1949, No. 155, § 1; 1977, No. 366, § 1; A.S.A. 1947, § 81-1102; Acts 2007, No. 490, § 1; 2019, No. 910, § 172.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law".

11-10-106. Penalties.

(a) FALSE STATEMENT OR REPRESENTATION.

(1) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this chapter or under the unemployment compensation law of any state or of the United States Government, either for himself or herself or for any other person, shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than fifty dollars (\$50.00) or by imprisonment for not longer than thirty (30) days, or by both fine and imprisonment.

(2) Each false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) EMPLOYER'S FALSE STATEMENT OR REPRESENTATION.

(1) Any employing unit or any officer or agent of any employing unit or any other person who makes a false statement or representation knowing it to be false, who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any contributions or other payment or to furnish any report required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or by both fine and imprisonment.

(2) Each false statement or representation or failure to disclose a material fact and each day of the failure or refusal shall constitute a separate offense.

(c) WILLFUL VIOLATION.

(1) Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or by both fine and imprisonment.

(2) Each day the violation continues shall be deemed to be a separate offense.

(d) DISCLOSURE OF INFORMATION. If any employee or member of the Board of Review, the Director of the Division of Workforce Services, or any employee of the director, in violation of the provisions of § 11-10-314, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter; if any person who has obtained any list of applicants for work, or of claimants or recipients of benefits, under this chapter shall use or permit the use of the list for any political purpose; or if any person who has lawfully obtained information from the Division of Workforce Services which was obtained from any employing unit or individual pursuant to the administration of this chapter makes an unlawful use or disclosure of the information or uses or discloses the information in a manner inconsistent with the purposes for which it was lawfully obtained, then that person shall be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200) or imprisoned for not longer than ninety (90) days, or both.

(e) PROSECUTION AND APPEAL.

(1) Prosecutions for the violation of any of the provisions of this chapter may be begun by the filing of information in any court having jurisdiction, without bond for costs, by the director, any field auditor, or other duly authorized agent of the director.

(2) Appeals may be prosecuted from any verdicts or rulings contrary to the state, without appeal bonds, by the filing of a petition for appeal by any director, auditor, or agent.

(f) RETALIATION BY EMPLOYER OR AGENT OF EMPLOYER.

(1) Any employing unit or any officer or agent of any employing unit or any other person who retaliates in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his or her participating in the preparation for or testifying in a proceeding under this chapter shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or both fine and imprisonment.

(2) Each act of retaliation shall constitute a separate offense.

(g) **PENALTY IMPOSED BY DIRECTOR.**

(1) The director is authorized and empowered to impose a penalty of ten percent (10%) of the face amount of the check, draft, or order, or ten dollars (\$10.00), whichever is greater, against any employer or individual that or who as maker, drawer, or endorser makes payment of any contributions, or benefit overpayments, which are due under this chapter by means of a check, draft, or order drawn on any bank, person, firm, or corporation if the check, draft, or order is returned by the bank, person, firm, or corporation without having been paid in full.

(2) This penalty is cumulative to any other penalties provided by law.

History. Acts 1941, No. 391, § 16; 1943, No. 138, § 21; 1947, No. 398, § 13; 1983, No. 482, § 34; 1985, No. 8, § 29; 1985, No. 9, § 29; A.S.A. 1947, § 81-1119; Acts 1987, No. 753, §§ 23, 24; 1991, No. 100, § 1; 1993, No. 6, § 1; 2019, No. 315, § 802; 2019, No. 910, § 173.

Amendments. The 2019 amendment by No. 315 substituted “order or rule” for “order, rule, or regulation” in (c)(1).

The 2019 amendment by No. 910, in (d), substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” and substituted “Division of Workforce Services” for “Department of Workforce Services”.

11-10-108. Protection of rights and benefits — Limitation of fees.

(a) No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the Board of Review, the Director of the Division of Workforce Services, or his or her or its representatives, or by any court or any officer thereof, except that, if the court determines that the proceedings for judicial review have been instituted or continued without reasonable grounds, it may assess costs against the claimant or employer instituting or continuing the proceedings.

(b)(1) Any individual claiming benefits in any proceeding before the director or the board or his or her or its representatives or a court may be represented by counsel or other duly authorized agent.

(2) No counsel or agents shall either charge or receive an aggregate amount of more than five hundred dollars (\$500) for services rendered at the administrative appeal levels before the appeal tribunal or the board.

(c) Any person who violates any provision of this section shall, for each offense, be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.

History. Acts 1941, No. 391, § 15; 1943, No. 138, § 20; 1983, No. 482, § 33; A.S.A. 1947, § 81-1118; Acts 1999, No. 1116, § 1; 2019, No. 910, § 174.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-109. Protection of rights and benefits — Assignment, pledge, or encumbrance of benefits prohibited.

(a) Except as elsewhere provided in this section and § 11-10-110, any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void.

(b) Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt.

(c) Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when that individual was unemployed.

(d) Any waiver of any exemption provided for in this section and § 11-10-110 shall be void.

(e) Benefits shall be subject to tax levies issued by the Internal Revenue Service in accordance with 26 U.S.C. § 6331(h) provided that an agreement is entered into between the Internal Revenue Service and the Division of Workforce Services and approved by the United States Department of Labor that provides for the payment of all administrative costs associated with processing the tax levies.

History. Acts 1941, No. 391, § 15; 1981 (Ex. Sess.), No. 37, § 2; A.S.A. 1947, § 81-1118; Acts 1999, No. 1116, § 2; 2019, No. 910, § 175.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (e).

11-10-110. Protection of rights and benefits — Exception for withholding child support — Definitions.

(a) At the time of filing the claim, an individual filing a new claim for unemployment compensation shall disclose whether or not the individual owes child support obligations as defined under subdivision (g)(1) of this section. If any individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the Director of the Division of Workforce Services shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment compensation.

(b) The director shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subdivision (g)(1) of this section:

(1) The amount specified by the individual to the director to be deducted and withheld under this section if neither subdivision (b)(2) nor subdivision (b)(3) of this section is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the director under section 454(19)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subdivision (b)(3) of this section is applicable; or

(3) Any amount otherwise required to be so deducted and withheld from his or her unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the director.

(c) Any amount deducted and withheld under subsection (b) of this section shall be paid by the director to the appropriate state or local child support enforcement agency.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a)-(d) of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the director under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g)(1) The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the United States Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(2) The term "state or local child support enforcement agency" as used in this chapter means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subdivision (g)(1) of this section.

History. Acts 1941, No. 391, § 15; 1981 (Ex. Sess.), No. 37, § 2; A.S.A. 1947, § 81-1118; Acts 2019, No. 910, § 176.

substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

Amendments. The 2019 amendment

11-10-111. Protection of rights and benefits — Exception for withholding food stamp overages — Definition.

(a)(1) An individual filing a new claim for unemployment compensation shall at the time of filing the claim disclose whether or not he or she owes an uncollected overissuance, as defined in section 13(c)(1) of the Food Stamp Act of 1977, of food stamp coupons.

(2) The Director of the Division of Workforce Services shall notify the state food stamp agency enforcing the obligation of any individual who discloses that he or she owes a food stamp overage obligation and who is determined to be eligible for unemployment compensation.

(b) The director shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected over-issuance:

(1) The amount specified by the individual to the director to be deducted and withheld under this section;

(2) The amount, if any, determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or

(3) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1997.

(c) Any amount deducted and withheld under this section shall be paid by the director to the food stamp program administered by the Division of County Operations.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the Department of Human Services as repayment of the individual's uncollected food stamp overissuance.

(e) For purposes of this section, the term "unemployment compensation" means any compensation payable under this act, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only after an agreement has been made for reimbursement by the department for the administrative costs incurred by the director under this section which are attributable to the repayment of uncollected food stamp overissuances.

History. Acts 1997, No. 234, § 1; 2019, Workforce Services" for "Director of the No. 910, § 177. Department of Workforce Services" in

Amendments. The 2019 amendment substituted "Director of the Division of (a)(2).

SUBCHAPTER 2 — DEFINITIONS

SECTION.

- 11-10-201. Base period.
- 11-10-206. Director.
- 11-10-207. Rules.
- 11-10-208. Employing unit.
- 11-10-209. Employer.

SECTION.

- 11-10-210. Employment.
- 11-10-214. Unemployment.
- 11-10-215. Wages.
- 11-10-220. Educational institutions.
- 11-10-227. Treatment of Indian tribes.

Effective Dates. Acts 2013, No. 1180, § 2: Apr. 12, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that ElderChoices clients are among the state's most vulnerable citizens; that

ElderChoices personal services caregivers provide essential assistance to ElderChoices clients to help them remain healthy and to keep them in their homes and out of institutions; that personal care services caregivers for ElderChoices cli-

ents are jeopardized by recent decisions by the Department of Workforce Services regarding the employment status of personal care services caregivers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 945, § 2: Apr. 2, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that employers struggle to create and expand businesses in our sluggish economy; that developing the state's workforce is the most effective route to economic growth; and that this act is immediately necessary because lost time in meeting the business crisis may set Arkansas at a disadvantage in the regional economy. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The

date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 1115, § 2: Jan. 1, 2018.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-10-201. Base period.

(a)(1) As used in this chapter, unless the context clearly requires otherwise, "base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of the benefit year.

(2) For claims involving wages of several states, the base period shall be that which is applicable under the unemployment insurance laws of the paying state.

(b)(1) If an individual lacks sufficient base-period wages because of a job-related injury for which he or she received workers' compensation, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim upon written application by the claimant.

(2) "Extended base period" means the four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except that any wages earned that would render the

Division of Workforce Services out of compliance with applicable federal law will be excluded if used in a prior claim.

(3) Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged.

(c)(1) Beginning with initial claims filed on July 1, 2009, and thereafter, if an individual lacks sufficient base-period wages, an alternate base period shall be substituted for the current base period.

(2) "Alternate base period" means the four (4) completed calendar quarters immediately preceding the first day of that benefit year.

History. Acts 1941, No. 391, § 2; 1947, No. 398, § 1; 1973, No. 350, § 1; A.S.A. 1947, § 81-1103; Acts 1997, No. 234, § 2; 2009, No. 802, § 1; 2019, No. 910, § 178.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (b)(2).

11-10-206. Director.

As used in this chapter, unless the context clearly requires otherwise, "director" means the Director of the Division of Workforce Services.

History. Acts 1941, No. 391, § 2; 1955, No. 395, § 1; 1977, No. 366, § 2; A.S.A. 1947, § 81-1103; Acts 1991, No. 100, § 2; 2019, No. 910, § 179.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services".

11-10-207. Rules.

All rules previously promulgated under this chapter shall be enforceable by the Director of the Division of Workforce Services and shall remain in full force and effect unless or until such time as amended by the director.

History. Acts 1941, No. 391, § 2; 1955, No. 395, § 1; 1977, No. 366, § 2; A.S.A. 1947, § 81-1103; Acts 1991, No. 100, § 3; 2019, No. 315, § 803; 2019, No. 910, § 180.

Amendments. The 2019 amendment by No. 315 substituted "Rules" for "Regu-

lations" in the section heading and in the text.

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services".

11-10-208. Employing unit.

(a)(1) As used in this chapter, unless the context clearly requires otherwise, "employing unit" means any individual, organization, or legal representative of a deceased person.

(2) This term includes but is not limited to any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, and the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing which has had one (1) or more individuals performing services for it within this state.

(3) "Employing unit" shall also mean the state or any agency, board, commission, department, institution, or instrumentality of the state and any political subdivision of the state and any instrumentality of

any political subdivision of the state, any instrumentality of more than one (1) of the foregoing, any instrumentality of the foregoing and one (1) or more other states or political subdivisions, which has had one (1) or more individuals performing services for it.

(b)(1) All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

(2) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by the employing unit for all the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or the person, provided that the employing unit had actual or constructive knowledge of the work.

(c)(1) Any employer may on or before December 1 prior to the year the application is to become effective make application in writing to the Division of Workforce Services to participate in a joint account with one (1) or more other employers.

(2) The division shall approve those applications that meet the requirements of this section.

(3) Any application to participate in a joint account may be filed on or before December 1 prior to the year the membership is to become effective, provided, however, all contributions, interest, and penalties due from the applicant-employer must be paid prior to the effective date of the employer's membership in the joint account.

(4) All such applications shall be accepted only on the condition that the applicant waive all rights he or she has in his or her individual employer account under the law when the division approves his or her application and merges his or her individual account into a joint account for experience-rating purposes.

(5) Each applicant-employer shall agree to assume joint and several liability for any contributions, interest, and penalties accruing on the part of any one (1) of the employers participating in the joint account during the duration of the account in consideration for the division's granting the applicant-employer the right to participate in it.

(6) Each employer participating in a joint account agrees to maintain a sufficient record of the employee's own employment in order that the employer can furnish the division with information necessary to enable the division to make proper certification to the Internal Revenue Service under the Federal Unemployment Tax Act and to enable the division to determine any benefit charges against the employee's separate account.

(7) No reduced rate of contributions shall be established for any joint account until each participating employer is individually eligible for the calculation of a contribution rate.

(8) All joint accounts will be maintained only on a calendar-year basis, and joint accounts must be maintained for a minimum period of two (2) calendar years unless terminated sooner by action of the division.

(9) All contribution credits for all employers in a joint account will be calculated together. All benefit payments chargeable against all employers in a joint account will be calculated together. The average annual payroll of the joint account will be the average of the annual payrolls of all employers participating in the account.

(10) If any individual, type of organization, or employing unit succeeds to the business of an employer participating in a joint account under conditions which would require the transfer of any separate account of that employer to the successor, the successor shall be ipso facto a member of the joint account.

(11)(A) Withdrawal from a joint account by any participating employer may be approved if the request for withdrawal is made in writing to the division on or before September 30 of the year prior to the year for which the withdrawal is to be effective.

(B) The withdrawing employer shall as of the effective date of withdrawal be treated in all respects as a newly liable employer regardless of all prior contributions or benefit payment experience.

(C) The remaining employer or employers shall continue to constitute the joint account. The withdrawal or termination of all except one (1) member shall not dissolve such joint account unless and until such last member shall withdraw or terminate.

(12) Participation in a joint account shall not affect the right of any employer to terminate the employer's liability, but after termination, the employer shall in all respects be treated as a withdrawing employer under this section.

History. Acts 1941, No. 391, § 2; 1971, No. 35, § 2; 1977, No. 376, § 1; A.S.A. 1947, § 81-1103; Acts 1997, No. 234, § 3; 2019, No. 910, § 181.

substituted "Division of Workforce Services" for "Department of Workforce Services" in (c)(1); and substituted "division" for "department" throughout (c).

Amendments. The 2019 amendment

11-10-209. Employer.

As used in this chapter, unless the context clearly requires otherwise, "employer" means:

(1) Any individual or employing unit which, for some portion of ten (10) or more days, whether the days are or were consecutive, within the current or the preceding calendar year, has or had in employment one (1) or more individuals irrespective of whether the same individuals are or were employed in each day;

(2) Any employing unit for which service in employment as defined in § 11-10-210(a)(2) is performed, except as provided in subdivision (5) of this section;

(3) Any employing unit which is a nonprofit organization and for which service in employment includes, but is not limited to, service in employment as defined in § 11-10-210(a)(5), except as provided in subdivisions (4)(B) and (5)(B) of this section;

(4)(A) Any employing unit for which agricultural labor as defined in § 11-10-210(a)(5) is performed.

(B) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under subdivisions (1)-(3) or subdivision (5)(A) of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, the employing unit shall be determined an employer for the purposes of subdivision (1) of this section;

(5)(A) Any employing unit for which domestic service in employment as defined in § 11-10-210(a)(6) is performed.

(B) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivisions (1)-(3) or subdivision (4)(A) of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account;

(6) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of the acquisition was an employer subject to this chapter;

(7) Any individual or employing unit that acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, if the employment record of the individual or employing unit subsequent to the acquisition, together with the employment record of the acquired unit prior to the acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an employer under subdivision (1) of this section;

(8) Any employing unit not an employer by reason of any other subdivision of this section:

(A) For which, within either the current or preceding calendar year, service is or was performed with respect to which the employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(B) Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to the act to be an employer under this chapter;

(9) For the effective period of its election pursuant to § 11-10-403, any employing unit which has elected to become subject to this chapter; and

(10) For the purposes of subdivisions (1) and (3) of this section, employment shall include service that would constitute employment but for the fact that the service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into, in accordance with § 11-10-544(a), by the Director of the Division of Workforce Services and any agency charged with the administration of any other state or federal unemployment compensation law.

History. Acts 1941, No. 391, § 2; 1971, No. 35, § 2; 1973, No. 329, § 1; 1977, No. 366, § 2; 1977, No. 376, § 2; A.S.A. 1947, § 81-1103; Acts 2011, No. 980, § 4; 2019, No. 910, § 182.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (10).

11-10-210. Employment.

(a) As used in this chapter, unless the context clearly requires otherwise, "employment" means:

(1) Service performed after December 31, 1977, including service in interstate commerce, by:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee;

(C) [Repealed.]

(2) Service performed:

(A) By an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one (1) or more states or their instrumentalities; and

(B) In the employ of any political subdivision of this state or any instrumentality of any one (1) or more of the political subdivisions, or any instrumentality of this state or any of its political subdivisions and one (1) or more other states or political subdivisions. Provided that the service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (a)(4) of this section;

(3) Service performed by an individual in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954 if the organization had one (1) or more individuals in employment for some portion of a day in each of ten (10) different days, whether or not the days were consecutive, within the current or preceding calendar year irrespective of whether the same individuals are or were employed in each day;

(4) For the purposes of subdivisions (a)(2) and (3) of this section, the term "employment" does not apply to service performed:

(A) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(B) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

(C) In the employ of a governmental entity referred to in subdivision (a)(2) of this section if the service is performed by an individual in the exercise of duties;

- (i) As an elected official;
- (ii) As a member of a legislative body or a member of the judiciary of a state or political subdivision;
- (iii) As a member of the Arkansas Army National Guard or the Arkansas Air National Guard;

(iv) In a position which under or pursuant to the laws of this state is designated as a major nontenured policymaking or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(v) During any calendar year beginning on and after January 1, 1999, as an election official or election worker if the amount of the remuneration received by the individual during the calendar year is less than one thousand dollars (\$1,000);

(D) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or for the purpose of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed into the competitive labor market, by an individual receiving the rehabilitation or remunerative work;

(E) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training;

(F) By an inmate of a custodial or penal institution; or

(G) Beginning on and after July 1, 1999, by a person committed to a penal institution;

(5) Service performed by an individual in agricultural labor as defined in subdivision (f)(1) of this section when:

(A) The service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals employed in agricultural labor; or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the current or preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time;

(B) For the purposes of this subdivision (a)(5), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any

other mechanized equipment, which is provided by the crew leader; and

(ii) If the individual is not an employee of the other person within the meaning of subdivision (a)(1) of this section;

(C) For the purposes of this subdivision (a)(5), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under subdivision (a)(5)(B) of this section:

(i) The other person and not the crew leader shall be treated as the employer of the individual; and

(ii) The other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on his or her own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person;

(D) For the purposes of this subdivision (a)(5), the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays, either on his or her own behalf or on behalf of the other person, the individuals so furnished by him or her for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(6) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for an employing unit which paid cash remuneration of one thousand dollars (\$1,000) or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(7) Service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, or in the case of the Virgin Islands, in the employ of an American employer, other than service which is deemed employment under the provisions of subsections (b) and (c) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

(B) The employer has no place of business in the United States, but:

(i) The employer is an individual who is a resident of this state;

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state;

(C) None of the criteria of subdivision (a)(7)(A) or subdivision (a)(7)(B) of this section are met, but the employer has elected

coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on the service, under the law of this state; or

(D) "American employer" for purposes of this section means a person who is:

(i) An individual who is a resident of the United States;

(ii) A partnership, if two-thirds ($\frac{2}{3}$) or more of the partners are residents of the United States;

(iii) A trust, if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state;

(8) Notwithstanding subsection (b) of this section, all service performed by an officer or member of the crew of an American vessel on or in connection with the vessel if the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state; and

(9) Notwithstanding any other provisions of this section, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

(b) The term "employment" shall include an individual's entire service performed within or both within and without this state if the service is localized in this state. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within the state; or

(2) The service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state, for example, service that is temporary or transitory in nature or consists of isolated transactions.

(c) The term "employment" shall include an individual's entire service performed within, or both within and without, this state if the service is not localized in any state but some of the service is performed in this state and:

(1) The individual's base of operations is in this state; or

(2) If there is no base of operations, then the place from which the service is directed or controlled is in this state; or

(3) The individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state;

(4) The term "employment" shall also include an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(A) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(B) The place from which the service is directed or controlled is in this state.

(d) Service covered by an election pursuant to § 11-10-403 and service covered by an election duly approved by the Director of the Division of Workforce Services in accordance with an arrangement pursuant to § 11-10-544 shall be deemed to be employment during the effective period of the election.

(e) Service performed by an individual for an employer for wages in a lawful business, industry, trade, profession, or enterprise, and the individual's employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq., is deemed to be employment under this chapter.

(f) The term "employment" does not include:

(1) Service performed by an individual in agricultural labor, except as provided in subdivision (a)(5) of this section. For purposes of this subdivision (f)(1), the term "agricultural labor" means any service performed which was agricultural labor as defined in this subsection prior to January 1, 1972, and remunerated service performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in the Agricultural Marketing Act, 12 U.S.C. § 1141j, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D)(i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which the service is performed.

(ii) In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in subdivision (f)(1)(D)(i) of this section, but only if the operators produced more than one-half ($\frac{1}{2}$) of the commodity with respect to which the service is performed.

(iii) The provisions of subdivisions (f)(1)(D)(i) and (ii) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business. As used in this subdivision (f)(1), the term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards; or

(F)(i) As an alien admitted to the United States under the Immigration and Nationality Act, 8 U.S.C. § 1184(c) and 8 U.S.C. § 1101(a)(15)(H).

(ii) However, an alien exempted under subdivision (f)(1)(F)(i) of this section shall be counted in determining whether an agricultural employer meets the coverage requirements under subdivision (a)(5)(A) of this section;

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for an employing unit that paid cash remuneration of one thousand dollars (\$1,000) or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is fifty dollars (\$50.00) or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this section, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(A) On each of some twenty-four (24) days during the quarter, the individual performs for the employer for some portion of the day service not in the course of the employer's trade or business; or

(B) The individual was regularly employed as determined under subdivision (f)(3)(A) of this section by the employer in the performance of the service during the preceding calendar quarter;

(4) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft if the employee is employed on and in connection with the vessel or aircraft when outside the United States;

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his or her father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is:

(A) Wholly or partially owned by the United States; or

(B) Exempt from the tax imposed by section 3301 of the Federal Unemployment Tax Act by virtue of any provision of law which

specifically refers to that section or the corresponding section of prior law in granting the exemption;

(7) Service performed in the employ of any political subdivision of the state or any instrumentality of any political subdivision which is wholly owned by one (1) or more political subdivisions of the state;

(8) Service performed by an individual for any political caucus, committee, headquarters, or other groups of like nature not established on a permanent basis;

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act;

(10)(A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code of 1954, other than an organization described in section 401(a) or under section 521 of the Internal Revenue Code of 1954 if the remuneration for the service is less than fifty dollars (\$50.00);

(B) Service performed by an individual under the age of twenty-two (22) years who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subdivision (f)(10)(B) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(C) Service performed in the employ of a school, college, or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or

(D) Service performed in the employ of a hospital if the service is performed by a patient of the hospital as defined in § 11-10-221;

(11) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the United States Secretary of State shall certify to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is

regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(14) Service performed by an individual for any person or employing unit as an insurance agent or as an insurance solicitor if all service performed by the individual for the person or employing unit is performed for remuneration solely by way of commission;

(15) Any service performed by an individual for any person or employing unit as a real estate agent or as a real estate solicitor or salesman if all service performed by the individual for the person or employing unit is performed for remuneration solely by way of commission;

(16)(A) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, provided that the service does not constitute employment performed by an employee under the Federal Unemployment Tax Act;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(17) Service performed in the employ of an international organization;

(18) Service performed by an individual in or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweed, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(A) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes; and

(B) Service performed on or in connection with a vessel of more than ten (10) net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;

(19) Service that is performed by a nonresident alien individual for the period that he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(20) Service performed by a person committed to a penal institution;

(21)(A) Services performed as personal care services for a certified home- and community-based health services provider licensed under

§ 20-10-2301 et seq., unless the provider is a state or local government entity or federally recognized Indian tribe as described in 26 U.S.C. § 3306(c)(7) or a nonprofit organization as described in 26 U.S.C. § 3309(a)(1).

(B) Subdivision (f)(21)(A) of this section is retroactive to January 1, 2010;

(22) Services described in 26 U.S.C. § 3306(c)(20), as it existed on January 1, 2015;

(23)(A) Service performed by an owner-operator that provides a motor vehicle and the services of a driver to a motor carrier under a written contract.

(B) An employee or agent of the owner-operator shall not be considered an employee of the motor carrier for purposes of employment security taxation or compensation.

(C) This subdivision (f)(23) does not apply if:

(i) The service constitutes employment performed by an employee under the Federal Unemployment Tax Act; or

(ii) The owner-operator is a state or local government entity or federally recognized Indian tribe as described in 26 U.S.C. § 3306(c)(7) or a nonprofit organization as described in 26 U.S.C. § 3309(a)(1); or

(24)(A) Services performed by a direct seller as defined in the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, and as defined in other applicable federal law.

(B) This subdivision (f)(24) does not apply to:

(i) Services performed in the employ of a state or local government entity or federally recognized Indian tribe or territory if the services are excluded from employment under the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c)(7); or

(ii) Services performed in the employ of a religious, charitable, educational, or other organization if the services are excluded from employment under the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c)(8).

(g) If the services performed during one-half ($\frac{1}{2}$) or more of any pay period by an individual for any person or employing unit employing him or her constitute employment, all the services of the individual for the period shall be deemed to be employment, but if the services performed during more than one-half ($\frac{1}{2}$) of any pay period by an individual for any person or employing unit employing him or her do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this section, the term "pay period" means a period of not more than thirty-one (31) consecutive days for which a payment or remuneration is ordinarily made to the individual by any person or employing unit employing him or her.

History. Acts 1941, No. 391, § 2; 1943, No. 110, § 1; 1947, No. 398, § 1; 1949, No. 129, § 1; 1949, No. 155, § 2; 1955, No. 395, §§ 2, 3; 1963, No. 93, § 1; 1963, No. 104, § 1; 1965, No. 551, § 1; 1971, No. 35, § 3; 1973, No. 65, § 1; 1973, No. 329, §§ 2, 3, 4, 12; 1975, No. 609, § 1; 1975 (Extended Sess., 1976), No. 1083, §§ 2, 3; 1977, No. 376, §§ 3, 4; 1979, No. 492, §§ 1-3; 1979, No. 922, §§ 1-3; 1983, No. 482, §§ 1-3; 1985, No. 8, § 1; 1985, No. 9, § 1; A.S.A. 1947, § 81-1103; reen. Acts 1987, No. 672, § 2; Acts 1987, No. 753, § 1; 1995, No. 581, § 1; 1997, No. 234, § 4; 1999, No. 1116, §§ 3-5; 2003, No. 1223, § 1; 2013, No. 1180, § 1; 2015, No. 945, § 1; 2015, No. 1128, § 1; 2015, No. 1133, § 1; 2017, No. 591, § 1; 2017, No. 1115, § 1; 2019, No. 910, § 183; 2019, No. 1055, §§ 7, 8; 2021, No. 947, § 3.

Amendments. The 2017 amendment by No. 591 substituted “home- and com-

munity-based health services provider” for “ElderChoices Provider” in (f)(21)(A).

The 2017 amendment by No. 1115 added (f)(23).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (d).

The 2019 amendment by No. 1055 repealed (a)(1)(C); and rewrote (e).

The 2021 amendment added (f)(24).

U.S. Code. The Federal Unemployment Tax Act, referred to in this section, is codified as 26 U.S.C. § 3301 et seq.

For the definition of “direct seller”, referred to in subdivision (f)(24) of this section and enacted by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, and amended by the Small Business Job Protection Act, Pub. L. No. 104-188, see 26 U.S.C. § 3508.

Effective Dates. Acts 2017, No. 1115, § 2: Jan. 1, 2018.

11-10-214. Unemployment.

(a) As used in this chapter, unless the context clearly requires otherwise, an individual shall be deemed “unemployed” with respect to any week during which:

- (1) He or she performs no services;
- (2) No wages are payable to him or her with respect to that week, or if wages are payable to him or her for any week of less than full-time work, the wages are less than one hundred forty percent (140%) of his or her weekly benefit amount; and
- (3) He or she is not on leave approved by an employer under the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., as in effect January 1, 2003.

(b) An individual’s week of unemployment shall be deemed to commence the day on which he or she registers at a local employment office, except as the Director of the Division of Workforce Services may, by rule, otherwise prescribe.

History. Acts 1941, No. 391, § 2; 1949, No. 155, § 2; 1971, No. 35, § 4; 1977, No. 366, § 3; A.S.A. 1947, § 81-1103; Acts 1987, No. 753, § 2; 1991, No. 48, § 1; 1991, No. 100, § 4; 2003, No. 1223, § 2; 2019, No. 315, § 804; 2019, No. 910, § 184.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (b).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (b).

11-10-215. Wages.

(a)(1) As used in this chapter, “wages” means all remuneration paid for personal services, including without limitation, commissions, bo-

nuses, cash value of all remuneration paid in any medium other than cash, the value of which shall be estimated and determined in accordance with rules prescribed by the Director of the Division of Workforce Services, and tips received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to 26 U.S.C. § 6053(a).

(2) "Wages" does not include:

(A)(i) For the purposes of §§ 11-10-701 — 11-10-715:

(a) That part of remuneration paid to an individual by an employer with respect to employment during any calendar year beginning after December 31, 2003, and ending December 31, 2009, which exceeds ten thousand dollars (\$10,000);

(b) For any calendar year beginning after December 31, 2009, that part of remuneration which exceeds twelve thousand dollars (\$12,000);

(c) For a calendar year beginning after December 31, 2017, that part of remuneration that exceeds ten thousand dollars (\$10,000);

(d) For a calendar year beginning after December 31, 2019:

(1) Except as provided under subdivisions (a)(2)(A)(i)(d)(2) and (3) of this section, if the average seasonal unadjusted insured unemployment rate, as reported by the United States Department of Labor, for completed weeks during the period of July 1 through June 30 of the most recently completed state fiscal year is:

(A) Zero percent (0%) to one percent (1%), then that part of remuneration that exceeds seven thousand dollars (\$7,000), unless that part of the remuneration is subject to a tax under a federal law imposing the tax and against which credit may be taken for contributions required to be paid into a state unemployment fund is increased, then the new federal taxable wage base shall be the new minimum amount under this subdivision (a)(2)(A)(i)(d)(1)(A);

(B) One and one hundredths of a percent (1.01%) to one and forty-nine hundredths of a percent (1.49%), then that part of remuneration that exceeds eight thousand dollars (\$8,000), unless under a federal law imposing the tax and against which credit may be taken for contributions required to be paid into a state unemployment fund is increased, then that part of remuneration that is one thousand dollars (\$1,000) greater than the minimum amount under subdivision (a)(2)(A)(i)(d)(1)(A) of this section;

(C) One and one-half percent (1.5%) to two and nineteen hundredths of a percent (2.19%), then that part of remuneration that exceeds nine thousand dollars (\$9,000), unless under a federal law imposing the tax and against which credit may be taken for contributions required to be paid into a state unemployment fund is increased, then that part of remuneration that is two thousand dollars (\$2,000) greater than the minimum amount under subdivision (a)(2)(A)(i)(d)(1)(A) of this section; or

(D) Two and twenty hundredths of a percent (2.20%) or greater, then that part of remuneration that exceeds ten thousand dollars

(\$10,000), unless under a federal law imposing the tax and against which credit may be taken for contributions required to be paid into a state unemployment fund is increased, then that part of remuneration that is three thousand dollars (\$3,000) greater than the minimum amount under subdivision (a)(2)(A)(i)(d)(1)(A) of this section;

(2) If, during the period of July 1 through June 30 of the most recently completed state fiscal year, disbursements from the unemployment insurance trust fund exceed two hundred million dollars (\$200,000,000) and the balance of the unemployment insurance trust fund is less than six hundred million dollars (\$600,000,000), then that part of remuneration that exceeds eleven thousand dollars (\$11,000); or

(3) If, during the period of July 1 through June 30 of the most recently completed state fiscal year, disbursements from the unemployment insurance trust fund exceed two hundred fifty million dollars (\$250,000,000) and the balance of the unemployment insurance trust fund is less than four hundred million dollars (\$400,000,000), then that part of remuneration that exceeds twelve thousand dollars (\$12,000); and

(e) For the rate year beginning January 1, 2022, and ending December 31, 2022, "wages" shall not include the amount of remuneration that exceeds the lesser of:

(1) The amount calculated under subdivisions (a)(2)(A)(i)(d)(1)-(3) of this section; or

(2) Ten thousand dollars (\$10,000).

(ii) For the purposes of this subsection:

(a) Wages paid within a calendar year by a predecessor employer may be counted as though paid by a successor as defined in §§ 11-10-701 — 11-10-715; and

(b) The term "employment" includes services constituting employment under any unemployment insurance law of another state;

(B) The amount of any payment, with respect to services made to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for its employees, or for its employees and their dependents, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(i) Retirement;

(ii)(a) Sickness or accident disability, except payments made directly to the employee or his or her dependents.

(b) However, payments made directly to an employee or his or her dependents under a workers' compensation law shall not be considered to be "wages";

(iii) Medical and hospitalization expenses in connection with sickness or accident disability; or

(iv) Death, provided the individual in its employ does not have the:

(a) Option to receive, instead of provision for the death benefit, any part of the payment, or, if the death benefit is insured, any part of the

premiums or contributions to premiums paid by his or her employing unit; and

(b) Right, under the provisions of the plan or system or policy of insurance providing for the death benefit, to assign the benefit or to receive cash consideration in lieu of the benefit either upon his or her withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of his or her services with the employing unit;

(C) The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed by the Federal Insurance Contributions Act upon an individual in its employ with respect to services performed;

(D) Payments made by an employer under a cafeteria plan, within the meaning of 26 U.S.C. § 125, if the payment would not be treated as wages without regard to the plan and it is reasonable to believe that, if 26 U.S.C. § 125 applied for purposes of this section, 26 U.S.C. § 125 would not treat any wages as constructively received; or

(E) Fees paid to corporate directors.

(b) Except as otherwise provided in rules prescribed by the Director of the Division of Workforce Services, any third party which makes a sickness or accident disability payment which is defined in this section as wages shall be treated for purposes of this section and §§ 11-10-701 — 11-10-715 as the employer with respect to the wages.

(c) Nothing in this section, except subdivision (a)(1) of this section, shall exclude from the term “wages”:

(1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the Internal Revenue Code; or

(2) Any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code.

(d) Any amount deferred under a deferred compensation plan shall be treated as wages when the services for which compensation is deferred are performed.

History. Acts 1941, No. 391, § 2; 1943, No. 138, §§ 24, 25; 1947, No. 398, § 1; 1949, No. 155, § 2; 1955, No. 395, § 4; 1971, No. 35, § 5; 1975 (Extended Sess., 1976), No. 1083, § 4; 1977, No. 366, § 4; 1981, No. 43, § 1; 1983, No. 482, § 5; 1985, No. 8, § 2; 1985, No. 9, § 2; A.S.A. 1947, § 81-1103; reen. Acts 1987, No. 672, § 3; Acts 1987, No. 753, §§ 3, 4; 1989, No. 420, §§ 1, 2; 1993, No. 6, § 2; 1995, No. 519, § 1; 2003, No. 353, § 1; 2009, No. 802, § 2; 2017, No. 734, § 2; 2019, No. 315, §§ 805, 806; 2019, No. 512, § 1; 2019, No. 910, § 185; 2021, No. 368, § 1.

A.C.R.C. Notes. Acts 2017, No. 734, § 1, provided: “Legislative findings. The General Assembly finds that:

“(1) The State of Arkansas needs to take steps to ensure the financial stability of the Unemployment Compensation Fund;

“(2) Arkansas’s unemployment costs to employers are higher than some surrounding states;

“(3) Arkansas employers have been paying increased unemployment taxes since 2009 as a result of a recession which dramatically increased unemployment; and

“(4) Making the changes set forth in this bill will increase the stability of the Unemployment Compensation Fund and increase the state’s employers’ ability to compete in attracting businesses.”

Amendments. The 2017 amendment rewrote subsection (a).

The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(1) and (b).

The 2019 amendment by No. 512 added (a)(2)(A)(i)(d).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1).

The 2021 amendment added (a)(2)(A)(i)(e).

RESEARCH REFERENCES

ALR. Construction and Application of Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq. — Supreme Court Cases. 7 A.L.R. Fed. 3d Art. 4 (2016).

11-10-220. Educational institutions.

(a)(1) As used in this chapter, unless the context clearly requires otherwise, “institution of higher education” means an educational institution that:

(A) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(B) Is legally authorized in this state to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor’s or higher degree, provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(D) Is a public or other nonprofit institution.

(2) Notwithstanding any of the provisions of subdivision (a)(1) of this section, all colleges and universities in this state are institutions of higher education for purposes of this section.

(b) For the purposes of this chapter, an educational institution, other than an institution of higher education, is one:

(1) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of an instructor or teacher;

(2) Which is approved, licensed, or issued a permit to operate as a school by the Division of Elementary and Secondary Education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school;

(3) Which offers a course of study or training which may be academic, technical, trade, or in preparation for gainful employment in a recognized occupation; and

(4) Which does not meet the definition of “institution of higher education” as set forth in subsection (a) of this section.

History. Acts 1941, No. 391, § 2; 1971, No. 35, § 6; 1977, No. 376, § 6; A.S.A. 1947, § 81-1103; Acts 2019, No. 910, § 2222.

Amendments. The 2019 amendment substituted "Division of Elementary and Secondary Education" for "Department of Education" in (b)(2).

11-10-227. Treatment of Indian tribes.

(a) The term "employer" shall include any Indian tribe for which service in employment as defined under this chapter is performed.

(b) The term "employment" shall include service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act, provided the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) and is not otherwise excluded from "employment" under this chapter. For purposes of this section, the exclusions from employment in § 11-10-210(a)(4) shall be applicable to services performed in the employ of an Indian tribe.

(c) The term "tribal unit" means subdivisions, subsidiaries, and business enterprises wholly owned by an Indian tribe.

(d) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject under this chapter.

(e)(1) Indian tribes or tribal units subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers unless they elect to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions must make the election in the same manner and under the same conditions as provided in § 11-10-713 pertaining to state and local governments and nonprofit organizations subject to this chapter. Indian tribes will determine if reimbursement for benefits paid shall be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(3) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(f)(1)(A) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety (90) days after receipt of the bill shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (e) of this section, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(B) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (f)(1)(A) of this section, shall have the option reinstated if,

after a period of one (1) year, all contributions have been made timely, provided that no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(2)(A) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the Director of the Division of Workforce Services have been exhausted shall cause services performed for the tribe to not be treated as “employment” for purposes of subsection (b) of this section.

(B) The director may determine that any Indian tribe that loses coverage under subdivision (f)(2)(A) of this section may have services performed for the tribe again included as “employment” for purposes of subsection (b) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(C) If an Indian tribe fails to make payments required under subdivisions (f)(2)(A) and (B) of this section, including assessments of interest and penalty, within ninety (90) days after a final notice of delinquency, the director will immediately notify the Internal Revenue Service and the United States Department of Labor.

(g) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(1) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;

(2) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(3) Could cause the Indian tribe to be excepted from the definition of “employer”, as provided in subsection (a) of this section, and services in the employ of the Indian tribe, as provided in subsection (b) of this section, to be excepted from “employment”.

(h) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the United States Government shall be financed in their entirety by the Indian tribe.

History. Acts 2001, No. 1467, § 1; 2019, No. 910, § 186.

Amendments. The 2019 amendment substituted “Director of the Division of

Workforce Services” for “Director of the Department of Workforce Services” in (f)(2)(A).

SUBCHAPTER 3 — ADMINISTRATION AND ENFORCEMENT

SECTION.

- 11-10-301. Division of Workforce Services — Creation — Director.
- 11-10-302. Criminal background checks.
- 11-10-303. Division of Workforce Services — Employee insurance plans.
- 11-10-304. Arkansas State Employment Service — Creation.
- 11-10-305. [Repealed.]

SECTION.

- 11-10-306. Director — Duties and powers generally.
- 11-10-307. Director — Rules.
- 11-10-308. Director — Administrative determinations of coverage.
- 11-10-309. Director — Publication of rules, reports, etc.
- 11-10-310. Director — Personnel.
- 11-10-311. Employment stabilization.

SECTION.

- 11-10-312. Federal-state cooperation.
- 11-10-313. Compensation based on multiple-state earnings.
- 11-10-314. Disclosure of information.
- 11-10-315. Authority to administer oaths, issue subpoenas, etc.
- 11-10-316. Refusal to obey subpoena.
- 11-10-317. Protection against self-incrimination.
- 11-10-318. Employing unit to keep and report work records.
- 11-10-319. Representation in court.

SECTION.

- 11-10-320. Employment Security Administration Fund — Creation.
- 11-10-321. Employment Security Administration Fund — Deposit and disbursement.
- 11-10-322. Employment Security Administration Fund — Reimbursement of the fund.
- 11-10-325. Unemployment insurance fraud — Prevention, detection, and recovery.

Effective Dates. Acts 2015, No. 907, § 15: July 1, 2015. Emergency clause provided:

“(a) It is found and determined by the General Assembly of the State of Arkansas that federal law requires the implementation of state-level workforce development acts to authorize federal funding for workforce development programs; that the Arkansas Workforce Development Board must begin work immediately to prepare for the inauguration of local workforce development boards; that the first phase of work by the Arkansas Workforce Development Board must be completed to coincide with the beginning of the 2015-2016 fiscal year on July 1, 2015. Therefore, an emergency is declared to exist, and § 15-4-37-3704 being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

“(b) It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this act on July 1, 2015, is essential to the inauguration of the programs for which this act is provided, and that in the event of an extension of the legislative session, the delay in the effective date of this act beyond July 1, 2015, could work irreparable harm upon the proper administra-

tion and provision of essential programs created in the act. Therefore, an emergency is hereby declared to exist and, except for § 15-4-3704, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2015.”

Acts 2019, No. 373, § 2: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain employees and contractors of the Department of Workforce Services have access to confidential federal income tax information without having undergone a proper criminal background investigation; that to protect certain financial information, any individual that has access to confidential federal income tax information should have appropriate clearance; and that this act is immediately necessary because the Department of Workforce Services must conform with federal laws and regulations regarding confidential federal income tax information. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this

act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 667, § 5, provided: "Retractivity. The effective date of this act is retroactive to April 1, 2021."

Acts 2021, No. 667, § 6: Apr. 1, 2021. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that there is an urgent need to update and modernize the information technology systems for administering unemployment insurance claims and to create and apply an overpayment prevention and recovery process due to a rise in unemployment insurance fraud claims; that to combat unemployment insurance fraud claims, the Division of Workforce Services will modernize its systems and create and apply an overpayment prevention and recovery process to prevent, detect, and recover unemployment insurance fraud; and that this act is necessary because a failure of the system could deprive Arkansans of the necessary resources to preserve their health and well-being. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on April 1, 2021."

11-10-301. Division of Workforce Services — Creation — Director.

(a)(1) There is created a division to be known as the "Division of Workforce Services".

(2) The division shall be administered by a full-time salaried director.

(3) The Director of the Division of Workforce Services shall be appointed by and serve at the pleasure of the Governor.

(4) The director shall report to the Secretary of the Department of Commerce.

(5) The director shall have resided in the state for at least five (5) years and shall be a qualified elector.

(b) Before entering upon his or her duties, the director shall take and subscribe, and file in the office of the Secretary of State, an oath to support the United States Constitution and the Arkansas Constitution and to faithfully perform the duties of the office upon which he or she is about to enter.

(c) The director shall have such power and authority as he or she deems reasonable and proper for the effective administration of this chapter and will faithfully perform his or her duties and properly account for all funds received and disbursed by him or her under authority of this chapter.

(d) The director shall be the agent for service of process for all legal actions arising under this chapter or to which the division shall be named a party.

(e) The director shall procure an official seal, and every paper executed by the director in pursuance of law and sealed with the seal of his or her office shall be received in evidence in any court or other tribunal in this state and may be recorded in the same manner and with like effect as instruments regularly acknowledged.

(f)(1) The director shall have the authority to institute and prosecute in his or her name, as such, all suits, certificates of assessment, and other proceedings necessary for the collection of any taxes or overpayments collectible by him or her and which have become delinquent.

(2) No deposits of advance costs shall be required of the director in any suit or proceedings, nor shall he or she be required to give bond for costs, indemnity, or stay as a condition to the institution of any suit or proceedings, or to the issuance, service, or execution of any process therein, or ancillary thereto, or the appeal from any adverse action.

(g)(1) The director shall not be required to advance or pay any court costs to any court clerk for the institution or prosecution of any suit filed in his or her official capacity.

(2) No bond shall be required of the director in obtaining restraining orders, injunctions, or in any other cases where a bond is required to be made by a litigant, including supersedeas bond upon appeal.

History. Acts 1941, No. 391, § 10; No. 6, § 3; 2005, No. 1705, § 1; 2019, No. 1945, No. 202, § 1; 1947, No. 398, § 10; 910, §§ 187, 188.
1955, No. 395, § 27; 1975 (Extended Sess., 1976), No. 1083, § 10; A.S.A. 1947, §§ 81-1113, 81-1114; reen. Acts 1987, No. 672, § 9; Acts 1991, No. 100, § 5; 1993,

Amendments. The 2019 amendment rewrote (a); and substituted "division" for "department" in (d).

11-10-302. Criminal background checks.

(a) The Director of the Division of Workforce Services shall establish a criminal background investigation policy for the Division of Workforce Services.

(b)(1) An employee of the Division of Workforce Services or of a contractor of the Division of Workforce Services who may be authorized by the director to access or view federal tax information as part of the employee's job duties shall authorize:

(A) The director or his or her designee to obtain a state and federal criminal background check at the expense of the Division of Workforce Services; and

(B) The release of the criminal background check results to the director or his or her designee.

(2) The employee of the Division of Workforce Services or of a contractor of the Division of Workforce Services shall be subject to the policy established under subsection (a) of this section that shall include:

(A) A criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation that includes the taking of fingerprints;

(B) A criminal background check that satisfies the background investigation standards established by the Internal Revenue Service with regard to access to federal tax information;

(C) A criminal background check to be performed at least one (1) time every ten (10) years;

(D) The Identification Bureau of the Division of Arkansas State Police required to forward to the director or his or her designee all information obtained as a result of the criminal background check;

(E) Information received from a criminal background check to be used only for the purpose of making decisions regarding the retention of an employee in a position in which access to federal tax information may be authorized;

(F) Information received by the director or his or her designee from the Identification Bureau of the Division of Arkansas State Police under subdivision (b)(2)(D) of this section not to be released to any party other than the employee or his or her authorized representative; and

(G)(i) An employee who is employed by the Division of Workforce Services or by a contractor of the Division of Workforce Services required to notify the director or his or her designee of an arrest for a misdemeanor or felony offense within twenty-four (24) hours of the arrest.

(ii) Any information received under subdivision (b)(2)(G)(i) of this section shall be used only for the purpose of the director making a decision regarding retention of an employee following the arrest.

(iii) Failure to provide notice of a subsequent arrest under subdivision (b)(2)(G)(i) of this section is sufficient grounds for immediate termination of the employee's employment or other action as the director or his or her designee deems appropriate.

(c)(1) An applicant for employment with the Division of Workforce Services or with a contractor of the Division of Workforce Services who may be authorized by the director to access or view federal tax information as part of the applicant's job duties shall authorize:

(A) The director or his or her designee to obtain a state and federal criminal background check at the expense of the Division of Workforce Services; and

(B) The release of the criminal background check results to the director or his or her designee.

(2) An applicant shall be subject to the policy established under subsection (a) of this section that shall include:

(A) A criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation that includes the taking of fingerprints;

(B) A criminal background check that satisfies the background investigation standards established by the Internal Revenue Service with regard to access to federal tax information;

(C) A criminal background check required to be performed before the applicant is employed and granted access to federal tax informa-

tion and continued employment conditioned upon favorable information received from the criminal background check;

(D) The Identification Bureau of the Division of Arkansas State Police required to forward to the director or his or her designee all information obtained as a result of the criminal background check;

(E) Information received from a criminal background check to be used only for the purpose of making decisions regarding the employment of an applicant in a position in which access to federal tax information may or will be authorized; and

(F) Information received by the director or his or her designee from the Identification Bureau of the Division of Arkansas State Police under subdivision (c)(2)(D) of this section not to be released to any party other than the affected person or his or her authorized representative.

History. Acts 2019, No. 373, § 1.

rived from Acts 1979, No. 537, §§ 9, 10; 1985, No. 311, §§ 12, 13; A.S.A. 1947, §§ 81-1114.1, 81-1114.2; Acts 1989 (1st Ex. Sess.), No. 238, § 14; 1991, No. 100, § 6.

Publisher's Notes. Former § 11-10-302, concerning the Arkansas Employment Security Department, service to food stamp applicants, was repealed by Acts 2007, No. 490, § 2. The section was de-

11-10-303. Division of Workforce Services — Employee insurance plans.

(a) The Director of the Division of Workforce Services is authorized to formulate, adopt, and administer plans to provide the regular employees of the Division of Workforce Services, as an incident of their employment, with group life insurance or insurance against the payment of medical and hospital expenses or any similar type of insurance.

(b) Any plan adopted shall be paid pursuant to the contract entered into with one (1) or more insurance companies authorized to do business in this state, and it may require the payment of all or any part of the premium by the division or by the employees.

(c) If any plan adopted requires contributions by the employees, the director may provide for the withholding of the amount of the employees' contribution from their salaries. However, the contributing share of funds paid by the division as the employer shall come from funds granted to the agency by the United States Department of Labor for such purposes.

(d) The plan may provide for the continuation of any insurance provided on the same or on a different basis upon termination of employment or after the retirement of any employee who retires after March 3, 1971, pursuant to the Arkansas Public Employees' Retirement System.

(e) Any plan adopted shall provide benefits similar to those made available by the United States Government to its employees generally, and the cost thereof per employee shall not exceed the cost per employee that the United States Government pays for similar insurance benefits.

(f) Participation by any employee of the division in any plan adopted shall be on a voluntary basis at the option of the employee.

History. Acts 1971, No. 220, § 1; A.S.A. 1947, § 81-1126; Acts 1991, No. 100, §§ 7-9; 2019, No. 910, § 189.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Ser-

vices" in the section heading, and twice in (a); substituted "division" for "Department of Workforce Services" in (b), (c), and (f); and substituted "United States" for "federal" twice in (e).

11-10-304. Arkansas State Employment Service — Creation.

(a) The Arkansas State Employment Service is established within the Division of Workforce Services.

(b) The Director of the Division of Workforce Services, in the conduct of the service, shall establish and maintain free public employment offices in such numbers and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such functions as are within the purview of the Act of the United States Congress of June 6, 1933, hereinafter referred to as the "Wagner-Peyser Act".

(c) The provisions of that act of the United States Congress are accepted by this state, and the division is designated and constituted the agency of this state for the purposes of that act.

(d) All moneys received by this state under that act of the United States Congress shall be paid into the Employment Security Administration Fund, § 11-10-320, and shall be expended solely for the maintenance of the state system of public employment offices.

(e)(1) For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the director is authorized to enter into agreements with the United States Railroad Retirement Board, or any other agency of the United States or of this or any other state, charged with the administration of any law whose purposes are reasonably related to the purposes of this chapter.

(2) As a part of such agreements, the director may accept moneys, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed.

(3) All moneys received for these purposes shall be paid into the Employment Security Administration Fund.

(f) In addition to the services and activities otherwise authorized by this chapter, the division may perform, or contract for the performance of, such other services and activities as shall be specified in contracts for payment or reimbursement of the costs thereof made with the United States Secretary of Labor, with any federal, state, or local public agency, or administrative entity, or with any employer or private for-profit or nonprofit organization under, in accordance with, and in furtherance of the purposes of the Job Training Partnership Act, Pub. L. No. 97-300 [repealed].

History. Acts 1941, No. 391, § 12; 1947, No. 398, § 11; 1949, No. 369, § 8; 1985, No. 8, § 22; 1985, No. 9, § 22; A.S.A. 1947, § 81-1115; Acts 1991, No. 100, §§ 10-12; 2019, No. 910, §§ 190, 191.

Amendments. The 2019 amendment substituted “within the Division of Workforce Services” for “in the Department of Workforce Services” in (a); in (b), substi-

tuted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” and “the United States Congress” for “Congress”; in (c), substituted “the United States Congress” for “Congress” and “division” for “department”; and substituted “division” for “department” in (f).

11-10-305. [Repealed.]

Publisher's Notes. This section, concerning State Employment Security Advisory Council creation, was repealed by Acts 2017, No. 540, § 9. The section was derived from Acts 1941, No. 391, § 11;

1949, No. 155, § 12; 1971, No. 35, § 17; 1975, No. 609, § 9; A.S.A. 1947, § 81-1114; Acts 1991, No. 100, § 13; 1997, No. 234, § 5; 1997, No. 250, § 60.

11-10-306. Director — Duties and powers generally.

(a) It shall be the duty of the Director of the Division of Workforce Services to administer this chapter.

(b)(1) The director shall have power and authority to adopt, amend, or rescind such rules, employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end.

(2) Beginning on and after January 1, 1995, he or she shall have power and authority to equitably resolve issues involving employers or claimants if the issues are found to be the result of, or due to, agency error.

(c) Rules shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the director shall prescribe.

(d) The director shall determine his or her own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal which shall be judicially noticed.

(e) Not later than June 30 of each year, the director shall submit to the Governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendments to this chapter as he or she deems proper.

(f)(1) The reports shall include a balance sheet of the moneys in the funds in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then-current contributions. This reserve shall be set up by the director in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

(2) Whenever the director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly so inform the Governor and the General Assembly, and make recommendations with respect thereto.

(g)(1) The director, in addition to other provisions of this chapter, is authorized to set up and maintain within the Division of Workforce Services a unit known as the “Enforcement Unit”.

(2) The unit may be maintained by a staff adequate to make investigations, hold hearings, and take testimony in connection with the enforcement of this chapter to the end that fraudulent claims on the part of claimants and the violation of this chapter on the part of employers may be curtailed to the minimum possible.

(3) The employees of the unit shall have authority to make audits, investigate records and books of employers, hold hearings, administer oaths, and subpoena witnesses, papers, books, and records in connection with the investigations.

(4)(A) The subpoena shall be effective in any part of this state, and any circuit court either in term time or vacation may by order require additional witnesses or the production of other relevant evidence subpoenaed by the director or any other person duly authorized by the director.

(B) The court may compel obedience to its order by procedure of contempt.

History. Acts 1941, No. 391, § 11; 1953, No. 162, § 16; A.S.A. 1947, § 81-1114; Acts 1991, No. 100, § 14; 1995, No. 519, § 2; 2019, No. 315, §§ 807, 808; 2019, No. 910, §§ 192, 193.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b)(1) and (c).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a); and, in (g)(1), substituted “within the Division of Workforce Services” for “in the Department of Workforce Services” and “Enforcement Unit” for “enforcement unit”.

11-10-307. Director — Rules.

(a)(1) General and special rules may be adopted, amended, or rescinded by the Director of the Division of Workforce Services only after public hearing or opportunity to be heard thereon, on which proper notice has been given.

(2) General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one (1) or more newspapers of general circulation in this state.

(3) Special rules shall become effective ten (10) days after notification to or mailing to the last known address of the individuals or employing units affected thereby.

(b) Rules may be adopted, amended, or rescinded by the director and shall become effective in the manner and at the time prescribed by the director.

History. Acts 1941, No. 391, § 11; A.S.A. 1947, § 81-1114; Acts 2019, No. 315, § 809; 2019, No. 910, § 194.

Amendments. The 2019 amendment by No. 315 substituted “Rules” for “Regulations” in (b).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1).

11-10-308. Director — Administrative determinations of coverage.

(a) The Director of the Division of Workforce Services may, upon his or her own motion or upon application of an employing unit, after notice and opportunity for hearing, make findings of fact and, on the basis thereof, determinations with respect to whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment for that employing unit.

(b)(1) However, the director may at his or her own instance and shall upon the application of any interested party, certify the question of coverage to the Board of Review for its determination.

(2) An appeal may be taken from a determination made by the director to the board on all matters with respect to coverage determined by the director within twenty (20) days after the mailing of notice of the findings and determination to the employing unit or, in the absence of mailing, within twenty (20) days after the delivery of the notice.

(c) If supported by substantial evidence and in the absence of fraud, a determination of the director, in the absence of appeal therefrom, and a determination of the board shall be conclusive except as to errors of law for all purposes of this chapter except as herein otherwise provided and, together with the record therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions.

(d) A review of the determination made by the director or the board may be had by filing a petition for review in the Court of Appeals within thirty (30) calendar days after the mailing of notice of the determination to the employing unit's last known address, or in the absence of mailing, within thirty (30) calendar days after the delivery of the notice.

(e)(1) A determination of the director which has not been appealed and a determination of the board, as provided for in this section, together with the record thereof, may be introduced in any proceeding involving a claim for benefits.

(2) The facts therein found and the determination therein made shall not be binding if evidence to the contrary is introduced in the hearing on the claim for benefits.

(f)(1) Any party appealing a determination of the director to the board or the court shall be required to file quarterly reports and pay all contributions, penalties, or interest due and owing during the appeal process.

(2) Upon finalization of the appeal, if it is found that no tax is owed or a lesser tax, penalty, or interest is owed, then that amount shall be refunded or credited to the employer's account.

History. Acts 1941, No. 391, § 11; 234, § 6; 2005, No. 902, § 1; 2019, No. 1943, No. 138, § 14; 1979, No. 252, § 3; 910, § 195.

1985, No. 8, § 14; 1985, No. 9, § 14; **Amendments.** The 2019 amendment A.S.A. 1947, § 81-1114; Acts 1997, No. substituted "Director of the Division of

Workforce Services” for “Director of the Department of Workforce Services” in (a).

CASE NOTES

ANALYSIS

Covered Employment.
Exemptions.

Covered Employment.

In-home tutoring company that matched tutors with clients who needed tutoring was required to pay unemployment insurance taxes for the services performed by its tutors as the company’s relationship with its tutors constituted covered employment. *Jori Enterprises, LLC v. Dir., Dep’t of Workforce Servs.*, 2015 Ark. App. 634, 474 S.W.3d 910 (2015).

Exemptions.

Director of the Department of Workforce Services properly found that a cir-

cuit court was not exempt from unemployment-insurance-tax liability with respect to a mentor in a program designed to aid in the prevention of juvenile delinquency; the court’s relationship with the mentor constituted covered employment where the court failed to establish that the mentor was customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed for the court. *Jefferson-Lincoln County Circuit Court v. Dir., Dep’t of Workforce Servs. Employer Contributions Unit*, 2015 Ark. App. 485, 469 S.W.3d 817 (2015).

11-10-309. Director — Publication of rules, reports, etc.

The Director of the Division of Workforce Services shall make available for distribution to the public the text of this chapter, his or her general and special rules, his or her annual report to the Governor, and any other material he or she deems relevant and suitable and shall furnish the materials to any person upon application therefor.

History. Acts 1941, No. 391, § 11; 1985, No. 8, § 15; 1985, No. 9, § 15; A.S.A. 1947, § 81-1114; Acts 2019, No. 315, § 810; 2019, No. 910, § 196.

Amendments. The 2019 amendment by No. 315 deleted “regulations and” preceding “general”.

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services”.

11-10-310. Director — Personnel.

(a) Subject to other provisions of this chapter, the Director of the Division of Workforce Services is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his or her duties under this chapter.

(b) The director may delegate to any such person such power and authority as he or she deems reasonable and proper for the effective administration of this chapter and may, in his or her discretion, bond any person handling moneys or signing checks hereunder.

(c) The director is authorized and directed to provide for a merit system covering all persons employed in the administration of this

chapter and shall have authority, by rule, to provide for all matters that are appropriate to the maintenance of this system on the basis of efficiency and fitness.

(d) The director is authorized to adopt such rules as may be necessary to meet personnel standards promulgated by the Social Security Board pursuant to the Social Security Act, and the Wagner-Peyser Act, and to provide for the maintenance of the merit system required under this section in conjunction with any merit system applicable to any other state agency which meets the personnel standards promulgated by the board.

History. Acts 1941, No. 391, § 11; A.S.A. 1947, § 81-1114; Acts 2019, No. 315, § 811; 2019, No. 910, § 197.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (c); and substituted “rules” for “regulations” in (d).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-311. Employment stabilization.

The Director of the Division of Workforce Services shall take all appropriate steps to reduce and prevent unemployment, to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance, to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, planning districts, school districts, and the state of programs for public works to be used in times and places of economic downturn and high unemployment for the purpose of promoting the employment of unemployed and underemployed workers throughout the state, and to these ends, to carry on research and such investigations as he or she shall deem necessary and to publish the results thereof.

History. Acts 1941, No. 391, § 11; 1975, No. 609, § 10; A.S.A. 1947, § 81-1114; Acts 1991, No. 100, § 15; 2017, No. 540, § 10; 2019, No. 910, § 198.

Amendments. The 2017 amendment deleted “with the advice and aid of the

State Employment Security Advisory Council” following “Workforce Services”.

The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services”.

11-10-312. Federal-state cooperation.

(a) In the administration of this chapter, the Director of the Division of Workforce Services shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take such action, through the adoption of such appropriate rules, administrative methods, and standards as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of the provisions in §§ 11-10-534 — 11-10-543, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the director shall take such action as may be necessary to:

- (1) Ensure that the provisions are so interpreted and applied as to meet the requirements of the federal act referred to in this subsection as interpreted by the United States Department of Labor; and
- (2) Secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act referred to in this subsection.

History. Acts 1941, No. 391, § 11; 1971, No. 35, § 17; 1985, No. 8, § 16; 1985, No. 9, § 16; A.S.A. 1947, § 81-1114; Acts 2019, No. 315, § 812; 2019, No. 382, § 3; 2019, No. 910, § 199.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “rules” in (a).

The 2019 amendment by No. 382 deleted “the Job Training Partnership Act” following “the Wagner-Peyser Act” in (a).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-313. Compensation based on multiple-state earnings.

(a) The Director of the Division of Workforce Services shall participate in any arrangements for the payment of compensation on the basis of combining an individual’s wages and employment covered under this chapter with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in those situations and which include provisions for:

- (1) Applying the base period of a single state law to a claim involving the combining of an individual’s wages and employment covered under two (2) or more state unemployment compensation laws; and
- (2) Avoiding the duplicate use of wages and employment by reason of such combining.

(b)(1) Any and all wage and employment information necessary for the carrying out of the arrangements shall be promptly provided by employers upon request by the director.

(2) Willful failure to promptly provide the information shall subject an employer to the penalties set forth in § 11-10-106(b).

History. Acts 1971, No. 35, § 20; 1985, No. 8, § 30; 1985, No. 9, § 30; A.S.A. 1947, § 81-1123; Acts 1991, No. 100, § 16; 2019, No. 910, § 200.

Amendments. The 2019 amendment

substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of (a).

11-10-314. Disclosure of information.

(a)(1) Except as otherwise provided in this section, information obtained by the Director of the Division of Workforce Services from any employing unit or individual pursuant to the administration of this chapter and any determination as to the rights or status of any employer or individual made by the director pursuant to the administration of this chapter shall be held confidential, shall be protected by government privilege, and is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2)(A) The information in subdivision (a)(1) of this section shall not be used in any action or proceeding before any court, administrative tribunal, or body except those created by this chapter unless the Division of Workforce Services is a party, a real party in interest, or a complainant therein or unless the litigation involves criminal actions associated with this chapter.

(B) This information shall not be otherwise disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity.

(b)(1) Upon request, information from the records of the Division of Workforce Services that concerns a claim for benefits shall be provided to any interested party to the extent necessary for the proper representation of his or her position in any proceeding under this chapter.

(2) Notwithstanding any other provision of this chapter or any other law:

(A) Upon request, a claimant may be provided with any information contained only in the payment record of his or her unemployment insurance benefit claim or with information on his or her most recent monetary determination;

(B) In the absence of a pending proceeding under this chapter, confidential information from the records of the Division of Workforce Services may upon request be provided only to an:

(i) Individual to the extent that the information was provided by that individual; or

(ii) Employer to the extent that the information was provided by that employer; and

(C) Upon request, a job applicant may be provided with evidence of his or her registration for work.

(3) An individual or employer who may obtain confidential information under this subsection may authorize the disclosure of the confidential information on his or her behalf on the basis of informed consent as follows:

(A) To an agent who acts for or in the place of an individual or an employer by the authority of that individual or employer as follows:

(i) Upon presentation of a written release from the individual or business being represented, or if a release is not practical, upon the presentation of a form of consent as is permitted by the agency in accordance with state law;

(ii) In the case of an elected official performing constituent services, upon presentation by the official of reasonable evidence, including a letter from the individual or employer requesting the official's assistance or a written record of a telephone or electronic request from the individual or employer, that the individual or employer has authorized the disclosure; or

(iii) In the case of an attorney retained for purposes related to unemployment compensation law, upon the attorney's asserting that he or she represents the individual or employer in that matter; or

(B) To a third party, other than an agent, or a disclosure made on an ongoing basis even if to an agent, but only if:

(i) The recipient of the confidential information obtains a written release from the individual or employer to whom the information pertains that:

(a) Is signed by the individual or employer to whom the confidential information pertains;

(b) Contains a statement specifically identifying the confidential information to be disclosed;

(c) Contains a statement that state government files will be accessed to obtain the confidential information;

(d) Contains a statement of the specific purpose or purposes for which the confidential information is sought, and a statement that confidential information obtained under the release will be used only for that purpose or purposes; and

(e) Contains a statement indicating all the parties who may receive the confidential information disclosed; and

(ii) The purpose for which confidential information may be disclosed under subdivision (b)(3)(B)(i) of this section is limited to:

(a) Providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release; or

(b) Carrying out administration or evaluation of a public program to which the release pertains.

(c)(1) Except as otherwise provided in this section, upon request, the director may provide the confidential information to a public official for use in the performance of his or her official duties in compliance with applicable state and federal law.

(2) Confidential information that may be disclosed to a public official may also be disclosed to the agent or contractor of the public official, subject to the same terms and conditions applicable to the disclosure to the public official and subject to the written agreement between the director and the public official that the public official shall be responsible for ensuring that the agent or contractor complies with the requirements of applicable state and federal law.

(d)(1)(A) The confidential information may be made available to any agency of this or any other state, or to any federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, to the

Internal Revenue Service for unemployment compensation tax administration, to the United States Citizenship and Immigration Services for verifying the claimant's immigration status, to the Office of Federal Contract Compliance Programs, to the United States Bureau of Labor Statistics for use exclusively for statistical purposes under a cooperative agreement, or to any state or federal agency for income or eligibility verification purposes if mandated by Pub. L. No. 98-369 and implementing regulations promulgated thereunder by the United States Department of Labor or unless otherwise provided for in this section and §§ 11-10-306 — 11-10-312 and 11-10-315 — 11-10-318.

(B) The information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

(2) Upon request, the director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter.

(e) The director may request the United States Comptroller of the Currency to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter and may in connection with this request transmit any report or return to the United States Comptroller of the Currency as provided in applicable state and federal law.

(f) Upon request, the director shall make unemployment compensation records available to the United States Railroad Retirement Board and shall furnish copies of the records to the United States Railroad Retirement Board as the United States Railroad Retirement Board deems necessary for its purposes.

(g)(1) Information obtained in the administration of this chapter and in the administration of and concerning programs under the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, by the Division of Workforce Services, in compliance with applicable state and federal law, may be disclosed:

(A) To public officials;

(B) To agents or contractors of public officials; and

(C) On the basis of informed consent.

(2)(A) In order to comply with section 116(e)(4) of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, the director shall, to the extent practicable, cooperate in the conduct of evaluations of state programs as identified in section 116(e)(1) of the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, including related research projects and as provided for by the United States Secretary of Labor or the United States Secretary of Education.

(B) Upon request, the director shall make confidential information available to a federal official or an agent or contractor of a federal official requesting the information in the course of the evaluations.

(h)(1)(A) Upon request of a public agency administering or supervising the administration of a state plan of Temporary Assistance for Needy Families approved under Part A of Title IV of the Social Security Act, or the administration of a state plan of medical assistance approved under Title XIX of the Social Security Act, the administration of a state plan of food stamps approved under the Food Stamp Act of 1977, Pub. L. No. 95-113, request of a public agency charged with any duty or responsibility authorized or required under the Child Support and Establishment of Paternity Program provisions of Part D of Title IV of the Social Security Act, or request of officers or employees of the United States Department of Agriculture, the director shall furnish to the public agency information contained in the files of the Division of Workforce Services with respect to any individual specified in the request as to whether the individual is receiving, has received, or has made application for unemployment compensation, the date the individual was determined eligible or ineligible, the date the individual's claim was exhausted, the weekly benefit amount actually paid and the date paid, the individual's weekly benefit amount, whether the individual is receiving or has received wages, the name and address of the employer from whom the wages have been received and the amount of any wages received by the individual, the current or most recent home address of the individual, whether the individual has refused an offer of employment, and, if so, a description of the employment so offered, including, but not limited to, the terms, conditions, and rate of pay therefor.

(B) The requesting agency shall reimburse the Division of Workforce Services for costs incurred in providing the requested information.

(2) The director shall promulgate rules establishing such safeguards as are necessary to ensure that information disclosed as authorized in this section to state and local child support enforcement agency officers and employees is used only for purposes of establishing and collecting child support obligations from and locating individuals owing the obligations and to ensure that information disclosed as authorized in this section to officers and employees of the United States Department of Agriculture and to officers and employees of any state food stamp agency is used only for purposes of determining an individual's eligibility for benefits or the amount of benefits under the food stamp program established under the Food Stamp Act of 1977.

(3) Information requested by the Department of Human Services and the Department of Finance and Administration under this subsection shall be released to the appropriate divisions of the respective departments on a basis in accordance with a plan to be developed between the appropriate division of each department and the Division of Workforce Services.

(4)(A) In addition to the above, wage information contained in the records of the Division of Workforce Services shall be made available to the extent necessary for purposes of determining an individual's eligibility for aid or services or the amount of the aid or services to which an individual may be entitled under a state plan for aid and services to needy families with children approved under Part A of Title IV of the Social Security Act to a state or political subdivision thereof charged with the responsibility of making the determinations when the information is specifically requested on an individual by name and Social Security number by the state or political subdivision for those purposes.

(B) The governmental agency or entity requesting any information under this subsection shall reimburse the Division of Workforce Services for any and all costs incurred by the agency in making the requested information available.

(5)(A)(i) Officers or employees of the United States Department of Housing and Urban Development and representatives of a public housing agency shall be entitled to certain wage and unemployment compensation information with respect to individuals applying for or participating in any housing assistance program administered by the United States Department of Housing and Urban Development as provided for in section 303 of the Social Security Act at 42 U.S.C. § 503 but only as and to the extent mandated by Section 904(c) of Pub. L. No. 100-628, the McKinney Homeless Act, and implementing regulations.

(ii) All requests received by the director under this subsection shall be processed within three (3) business days.

(B) The requesting agency shall reimburse the Division of Workforce Services for the costs incurred in providing the requested information.

(i)(1)(A)(i) All records, files, and documents of the Division of Workforce Services pertaining to claims, benefit payments, assessments, contributions, disqualifications for benefits, removals of disqualifications for benefits, charges and credits to accounts, and classification of employers, wherever located, which relate in any way to an employer or an employee of the employer shall be made available at all times for examination by an affected employer, a claimant, or the duly authorized representative of an employer or a claimant.

(ii) But no record, file, or document shall be removed from the custody of the Division of Workforce Services.

(B)(i) Any information made available under this provision to a claimant shall be information pertaining only to that claimant.

(ii) Any information made available under this provision to an affected employer shall be information pertaining only to that employer.

(2) No finding of fact or conclusion of law contained in a decision of the Division of Workforce Services, an appeals hearing officer, the Board of Review, or a court obtained under this chapter shall have a

preclusive effect in any other action or proceeding except proceedings under this chapter.

(j)(1) To the extent necessary for the proper verification of transactions affecting his or her account as provided in §§ 11-10-701 — 11-10-715, upon receipt by the director of a request from an affected employer for information concerning benefits paid to a claimant who has been a base period employee of the employer, the director shall, as promptly as possible, furnish information regarding the periods of time for which benefits were paid and the amount of benefits chargeable to the employer that have been paid to the claimant up to the date of the employer's request for each worker the employer properly identifies in his or her request by Social Security number and name.

(2) However, information regarding benefits charged more than one (1) year prior to the last computation date may not be given.

(k)(1)(A) Upon receipt of a subpoena of a Workers' Compensation Commission administrative law judge by the director, information from an individual's claim record or from his or her application for work may be made available to the Workers' Compensation Commission for use in making administrative determinations under the Workers' Compensation Law, § 11-9-101 et seq., in court proceedings under that law, or in other actions reasonably necessary for the proper administration of the law.

(B) Photocopies of Division of Workforce Services records containing the information shall be received in evidence in any court or administrative proceeding had under the law provided that the copies have been sealed with the official seal of the director.

(2) The director shall not be obligated to make the information available unless:

(A) The subpoena is delivered at least five (5) work days prior to the date the information is required; and

(B) Payment of fifty dollars (\$50.00) for the cost of producing the information is made or tendered at the time of service of the order or within three (3) working days of service of the order.

(l)(1) Upon receipt of an order from a court of record of this state by the director for information pertaining to an individual's current wage file and unemployment benefit payment record as contained in the records of the Division of Workforce Services, the information shall be made available to the court for the purpose of determining an amount of support to be set during a proceeding for the establishment or collection of child support obligations, or both.

(2) A photocopy of the records containing the information or a statement that no information for the requested individual is contained in the file of the Division of Workforce Services under the official seal of the director shall be received into evidence in the court of record.

(3) The court order shall be satisfied by mailing the document under seal directly to the court of record within ten (10) working days of receipt of the court order unless a motion challenging the information is filed or a subpoena is issued requiring the appearance of an employee of

the Division of Workforce Services with the court within thirty (30) days prior to the trial.

(4) The director shall comply with the court order for information if the following conditions are met:

(A) The order is delivered at least ten (10) workdays prior to the date that the information is required;

(B) The court order includes the name and Social Security number of the individual for whom information is requested; and

(C) The court order is accompanied by the payment of ten dollars (\$10.00) by the moving party seeking the information to the Division of Workforce Services for costs associated with producing the information.

(5) Provided, however, the Division of Workforce Services may not release information under this subsection if the United States Secretary of Labor rules that release of the information would be grounds to find that the state is in substantial noncompliance with 42 U.S.C. § 503 or 26 U.S.C. § 3304.

(m)(1) The director may provide information or take other actions necessitated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

(2) The director may furnish wage and claim information to the state and national New Hire Directories created by Pub. L. No. 104-193 for the purposes of locating individuals to establish paternity and to establish, modify, or enforce child support orders. The director may authorize state and local child support enforcement agencies to disclose unemployment compensation data to an agent and may permit state and local child support enforcement agencies to access such data for establishing paternity and other purposes.

(3) Information requested pursuant to Pub. L. No. 104-193 shall only be released in accordance with an agreement between the Division of Workforce Services and the appropriate state or federal agency. Safeguards protecting the confidentiality of such data and reimbursement of costs for providing such information will be made part of the agreement.

(n) The State Department for Social Security Administration Disability Determination may be provided employee wage files and unemployment claim records for the purpose of investigations for potential fraud. The State Department for Social Security Administration Disability Determination is strictly prohibited from making any disclosure or redisclosure of the confidential information which may be made available to it under this subsection. Reasonable costs will be required for producing this information.

(o) The Workers' Compensation Fraud Investigation Unit may be furnished pursuant to a subpoena any individual's wage file and unemployment benefit payment record as contained in the records of the Division of Workforce Services. These records are being provided for the sole purpose of investigating potential workers' compensation fraud. The Workers' Compensation Fraud Investigation Unit is strictly

prohibited from making any disclosure or redisclosure of the confidential information which may be made available to it under the provisions of this subsection. However, records provided to the Workers' Compensation Fraud Investigation Unit pursuant to this subsection may be made part of a Workers' Compensation Fraud Investigation Unit referral for criminal charges to a local prosecutor under § 11-9-106(d)(3) and used in any resulting criminal trial or prosecution, including cases tried by employees of the Workers' Compensation Fraud Investigation Unit under the provisions of § 11-9-106(e)(2). Reasonable costs may be required for producing the subpoenaed information.

(p)(1)(A) The director or a recipient of confidential information, when served with a subpoena or other compulsory process for production of confidential information or testimony upon a matter concerning the confidential information, shall file and diligently pursue a motion to quash the subpoena or other compulsory process if the court has not already ruled on the disclosure or if other means of avoiding the disclosure are unsuccessful.

(B) The director or recipient of confidential information may disclose the confidential information only if the motion to quash is denied, but then only under such terms as the court orders to protect the confidentiality of the information and to reimburse the costs of disclosure to the Division of Workforce Services.

(C) The recipient of confidential information, as a condition of receiving such information, shall be required to notify the director immediately upon being served with a subpoena or other compulsory process seeking disclosure of confidential information.

(2) The motion to quash is not required by the director if:

(A) The subpoena or other compulsory process has been served, and a court of competent jurisdiction has previously issued a binding precedential decision that requires disclosures of this type, or a well-established pattern of prior court decisions has required disclosures of this type; or

(B)(i) The subpoena is issued by a local, state, or federal governmental official with authority to obtain the information by subpoena, other than a clerk of court on behalf of a litigant.

(ii) The director may provide the confidential information to these officials without the actual issuance of a subpoena if the official provides the director with information from which the director may determine that the official has subpoena authority for the information to be disclosed in compliance with the requirements of applicable state and federal law.

(3)(A) The director may release information in the possession of the Division of Workforce Services to federal public officials in the performance of their official duties acting through the United States Attorney's office.

(B) The information will be disclosed under an information exchange agreement with the United States Attorney's office, which will ensure the protection of the confidentiality of the information and the cost of providing the information.

(q)(1) To perform audit and compliance duties, federal and state agencies may be provided unemployment insurance contribution information reported by companies doing business in Arkansas, including without limitation employer name, employer address, employer telephone number, federal employer identification number, and tax identification number of employees.

(2) The recipient agency shall not make any disclosure or redisclosure of the confidential information provided under subdivision (q)(1) of this section.

(r)(1)(A) Grant funds paid to the state for unemployment compensation administration may be used to pay only the costs of those disclosures necessary for the proper administration of the unemployment compensation program in accordance with the requirements of applicable state and federal law.

(B) All other costs for disclosures of confidential information shall be paid to the Division of Workforce Services by the recipient as a condition of receipt of the information in accordance with the requirements of applicable state and federal law.

(2)(A) The director and the recipient of confidential data under this section shall enter into a data-sharing agreement in accordance with the requirements of applicable state and federal law.

(B) In the event that a data-sharing agreement is not required, the recipient shall safeguard and hold secure the confidential data in accordance with the requirements of applicable state and federal law.

(C) A publication of an analysis of confidential data shall be done in strict accordance with the rules used by the agency and as prescribed by the United States Bureau of Labor Statistics to prevent the disclosure of individual employer or individual claimant information, unless otherwise specifically authorized by federal law.

History. Acts 1941, No. 391, § 11; 1949, No. 155, § 13; 1977, No. 226, § 1; 1977, No. 376, § 15; 1981, No. 43, § 16; 1983, No. 482, § 32; 1985, No. 8, §§ 17-21; 1985, No. 9, §§ 17-21; 1985, No. 293, § 1; 1985, No. 923, § 1; A.S.A. 1947, § 81-1114; Acts 1987, No. 753, § 19; 1989, No. 420, §§ 3, 4; 1991, No. 100, §§ 17-21; 1991, No. 869, § 1; 1993, No. 6, § 4; 1995, No. 519, §§ 3, 4; 1997, No. 234, §§ 7-11; 1997, No. 540, § 14; 1999, No. 1116, §§ 6-8; 2001, No. 1367, §§ 1, 2; 2001, No. 1467, § 2; 2001, No. 1477, § 1; 2003, No. 1223, § 3; 2003, No. 1341, §§ 1, 2; 2005, No. 1845, § 2; 2009, No. 273, § 1; 2009, No. 504, § 1; 2015, No. 907, § 1; 2017, No. 707, § 14; 2019, No. 242, § 1; 2019, No. 315, §§ 813-815; 2019, No. 910, §§ 201-220; 2021, No. 649, §§ 1-10.

Amendments. The 2017 amendment substituted "Department of Transportation" for "State Highway and Transporta-

tion Department" in the introductory language of (j)(5) and in (j)(5)(B).

The 2019 amendment by No. 242 inserted "and the Arkansas Economic Development Commission" in the introductory language of (j)(1); substituted "either the Arkansas Economic Development Council or the Arkansas Economic Development Commission" for "the commission" in (j)(1)(B); and made stylistic changes.

The 2019 amendment by No. 315 substituted "rule" for "regulation" in (b)(2)(A) and (c)(1)(A); and substituted "rules" for "regulations" in (e)(2).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1); substituted "Division of Workforce Services" for "Department of Workforce Services" throughout the section; substituted "Temporary Assistance for Needy Fami-

lies” for “Aid to Families with Dependent Children” in (e)(1)(A); substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (j)(6); in the introductory language of (n)(1), deleted “Beginning on and after January 1, 1995” at the beginning; and made stylistic changes.

The 2021 amendment repealed former (h), (j), (k), (m), (n), and (r)(4); added present (c), (f), (g), and (r); added “and is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.” in (a)(1); in (a)(2)(A), inserted “in subdivision (a)(1) of this section” and substituted “associated with” for “brought under provisions of”; rewrote (b) and present (d)(1)(A); in present (e), substituted “applicable state and federal law” for “section 1606(c) [repealed] of the Internal Revenue Code of 1939”; deleted “Effective July 1, 1997”

from present (m)(1); rewrote present (p)(1) and (p)(2); substituted “federal and state agencies” for “the Department of Finance and Administration” in present (q)(1); and substituted “recipient agency” for “Department of Finance and Administration” in present (q)(2).

U.S. Code. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, referred to in this section, is codified throughout Title 42 and other titles of the U.S. Code. See, e.g., 42 U.S.C. § 601 et seq.; 8 U.S.C. § 1611 et seq.

The Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, referred to in this section, is codified generally as 29 U.S.C. § 3101 et seq. Section 116 of the Workforce Innovation and Opportunity Act, referred to in subsection (g) of this section, is codified as 29 U.S.C. § 3141.

11-10-315. Authority to administer oaths, issue subpoenas, etc.

In the discharge of the duties imposed by this chapter, the Director of the Division of Workforce Services, the chair of an appeal tribunal, the members of the Board of Review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with disputed claims or the administration of this chapter.

History. Acts 1941, No. 391, § 11; 1943, No. 138, § 16; A.S.A. 1947, § 81-1114; Acts 2019, No. 910, § 221.

Amendments. The 2019 amendment

substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services”.

11-10-316. Refusal to obey subpoena.

(a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Director of the Division of Workforce Services, the Board of Review, the chair of an appeal tribunal, or any duly authorized representative of any of them shall have jurisdiction to issue to the person an order requiring the person to appear before the director, the board, the chair of an appeal tribunal, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b)(1) Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power to do so, in obedience to a subpoena of the director, the board, the chair of an appeal tribunal, or any duly authorized representative of any of them shall be punished by a fine of not less than two hundred dollars (\$200) or by imprisonment for not longer than sixty (60) days, or by both fine and imprisonment.

(2) Each day that the violation continues shall be deemed to be a separate offense.

History. Acts 1941, No. 391, § 11; substituted "Director of the Division of 1943, No. 138, § 17; A.S.A. 1947, § 81- Workforce Services" for "Director of the 1114; Acts 2019, No. 910, § 222. Department of Workforce Services" in (a).

Amendments. The 2019 amendment

11-10-317. Protection against self-incrimination.

(a) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Director of the Division of Workforce Services, the Board of Review, the chair of an appeal tribunal, or any duly authorized representative of any of them or in obedience to the subpoena of any of them in any cause or proceeding before the director, the board, or an appeal tribunal on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(b) However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History. Acts 1941, No. 391, § 11; substituted "Director of the Division of 1943, No. 138, § 18; A.S.A. 1947, § 81- Workforce Services" for "Director of the 1114; Acts 2019, No. 910, § 223. Department of Workforce Services" in (a).

Amendments. The 2019 amendment

11-10-318. Employing unit to keep and report work records.

(a)(1) Each employing unit shall keep true and accurate work records, for such periods of time and containing such information as the Director of the Division of Workforce Services may prescribe.

(2) The records shall be open to inspection and be subject to being copied by the director or his or her authorized representatives at any reasonable time and as often as may be necessary.

(b) The director, the Board of Review, and the chair of any appeal tribunal may require from any employing unit any sworn or unsworn

reports, with respect to persons employed by it, which he or she or the board deems necessary for the effective administration of this chapter.

History. Acts 1941, No. 391, § 11; substituted “Director of the Division of 1943, No. 138, § 15; A.S.A. 1947, § 81- Workforce Services” for “Director of the 1114; Acts 2019, No. 910, § 224. Department of Workforce Services” in

Amendments. The 2019 amendment (a)(1).

11-10-319. Representation in court.

(a) **CIVIL ACTIONS.** In any civil action to enforce the provisions of this chapter, the Director of the Division of Workforce Services, the Board of Review, and the state may be represented by any qualified attorney who is employed by the director and is designated by him or her for this purpose or at the director’s request by the Attorney General.

(b) **CRIMINAL ACTIONS.** All criminal actions for violations of any provisions of this chapter, or any rule issued pursuant thereto, shall be prosecuted by the Attorney General of the state, or by the prosecuting attorney of the county in which the violation occurred.

History. Acts 1941, No. 391, § 17; The 2019 amendment by No. 910 substituted “Director of the Division of Work- 1943, No. 138, § 22; 1963, No. 93, § 11; force Services” for “Director of the Depart- A.S.A. 1947, § 81-1120; Acts 2019, No. 315, § 816; 2019, No. 910, § 225. ment of Workforce Services” in (a).

Amendments. The 2019 amendment by No. 315 deleted “or regulation” following “rule” in (b).

11-10-320. Employment Security Administration Fund — Creation.

(a) There is created in the State Treasury a special fund to be known as the “Employment Security Administration Fund”.

(b) All money deposited or paid into the Employment Security Administration Fund shall be continuously available to the Director of the Division of Workforce Services for expenditure in accordance with the provisions of this chapter and shall not lapse at any time or be transferred to any other fund.

(c) The Employment Security Administration Fund shall consist of any money appropriated by this state in accordance with this chapter; all money received from the United States or any agency thereof; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to the agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to property, equipment, or supplies purchased from money in the Employment Security Administration Fund; and all proceeds realized from the sale or disposition of any property, equipment, or supplies which may no longer be necessary for the proper administration of this law.

(d) Notwithstanding any provision of this section and §§ 11-10-321 and 11-10-322, all money requisitioned and deposited into the Employment Security Administration Fund pursuant to this chapter shall remain part of the Employment Security Administration Fund and shall be used only in accordance with the conditions specified in this chapter.

(e) The director shall transmit to the Auditor of State all documents and information required by the Auditor of State from which to prepare a register. The Auditor of State is authorized and directed to keep a register in his or her office of all checks and other fiscal transactions of the expenditures from the Employment Security Administration Fund. This information shall be a public record.

History. Acts 1941, No. 391, § 13; 1953, No. 325, § 1; 1959, No. 142, § 2; 1985, No. 8, § 23; 1985, No. 9, § 23; A.S.A. 1947, § 81-1116; Acts 2019, No. 910, § 226.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (b).

11-10-321. Employment Security Administration Fund — Deposit and disbursement.

(a) All money in the Employment Security Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in the Employment Security Administration Fund shall not be commingled with other state funds but shall be maintained in a separate account on the books of a depository bank.

(b) Disbursements shall be paid out of the Employment Security Administration Fund on requisitions drawn by the Director of the Division of Workforce Services under rules of the director.

(c) All money in the Employment Security Administration Fund, except money received pursuant to the authorization in section 903 of the Social Security Act, shall be expended solely for the purpose and in the amounts found necessary by the United States Secretary of Labor for the proper and efficient administration of the employment security program.

History. Acts 1941, No. 391, § 13; 1953, No. 325, § 1; 1959, No. 142, § 2; A.S.A. 1947, § 81-1116; Acts 1991, No. 100, § 22; 2019, No. 315, § 817; 2019, No. 910, § 227.

by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (b).

Amendments. The 2019 amendment

11-10-322. Employment Security Administration Fund — Reimbursement of the fund.

(a) If any money in the Employment Security Administration Fund, paid to this state under Title III of the Social Security Act or the

Wagner-Peyser Act, is found by the United States Secretary of Labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the United States Secretary of Labor for the proper administration of the employment security program, it is the policy of this state that the money shall be replaced by money appropriated for that purpose by the state to the fund for expenditure as provided in this chapter.

(b) Upon receipt of such a finding by the United States Secretary of Labor, the Director of the Division of Workforce Services shall promptly report the amount required for the replacement to the Governor, and the Governor shall, at the earliest opportunity, submit to the General Assembly a request for the appropriation of that amount.

<p>History. Acts 1941, No. 391, § 13; 1953, No. 325, § 1; 1959, No. 142, § 2; 1985, No. 8, § 24; 1985, No. 9, § 24; A.S.A. 1947, § 81-1116; Acts 1991, No. 100, § 23; 2019, No. 910, § 228.</p>	<p>Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (b).</p>
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11-10-325. Unemployment insurance fraud — Prevention, detection, and recovery.

(a) By July 1, 2021, the Director of the Division of Workforce Services shall adopt and implement internal administrative policies and business processes:

- (1) To pursue recovery of improper overpayments of unemployment benefits to the extent permitted by state and federal law; and
- (2) To allow an employer to notify the Division of Workforce Services that an individual has refused an offer of suitable work, which shall be reviewed by the director or his or her designee for a determination as to continued eligibility for benefits.

(b) By January 1, 2022, the director shall adopt and implement internal administrative policies and business processes:

- (1) To prevent and detect fraud in the unemployment insurance program to prevent the payment of unemployment insurance program benefits to:
 - (A) An incarcerated individual; and
 - (B) An individual who is listed on state and national new hire databases as currently employed and ineligible for unemployment insurance program benefits; and
- (2) To engage with and routinely utilize the Integrity Data Hub, administered by the National Association of State Workforce Agencies, or a similar program, to prevent and detect fraud in the unemployment insurance program.

<p>History. Acts 2021, No. 667, § 1.</p> <p>Effective Dates. Acts 2021, No. 667, § 5, provided: “Retroactivity. The effective</p>	<p>date of this act is retroactive to April 1, 2021.”</p>
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SUBCHAPTER 4 — EMPLOYER COVERAGE**SECTION.**

11-10-402. Termination.

11-10-403. Election.

SECTION.

11-10-404. Nonprofit employers.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-10-402. Termination.

Except as otherwise provided in § 11-10-403, an employing unit may cease to be an employer subject to this chapter in accordance with the rules of the Director of the Division of Workforce Services.

History. Acts 1941, No. 391, § 8; 1943, No. 256, § 2; A.S.A. 1947, § 81-1111; Acts 2019, No. 315, § 818; 2019, No. 910, § 229.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations".

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services".

11-10-403. Election.

(a)(1) An employing unit, not otherwise subject to this chapter, which filed with the Director of the Division of Workforce Services its written election to become an employer subject hereto for not less than two (2) calendar years shall, with the written approval of the election by the director, become an employer subject hereto to the same extent as all other employers, as of the date stated in the approval.

(2) That employing unit shall cease to be subject hereto as of January 1 of any calendar year subsequent to two (2) calendar years, only if during January of each year it has filed with the director a written notice to that effect.

(b)(1) An employing unit, for which services that do not constitute employment, as defined in this chapter, are performed, may file with the director a written election that all services performed by individuals in its employ in one (1) or more distinct establishments or places of

business shall be deemed to constitute employment for all the purposes of this chapter for not less than two (2) calendar years.

(2) Upon the written approval of the election by the director, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in the approval.

(3) The services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years, only if during January of such year the employing unit has filed with the director a written notice to that effect.

History. Acts 1941, No. 391, § 8; 1947, No. 398, § 8; A.S.A. 1947, § 81-1111; Acts 1991, No. 100, § 24; 2019, No. 910, § 230. substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1).

11-10-404. Nonprofit employers.

(a)(1)(A) Any political subdivision of this state may elect to cover under this chapter service performed by employees in all of the hospitals and institutions of higher education, as defined in §§ 11-10-220 and 11-10-221, operated by the political subdivision.

(B) Election is to be made by filing with the Director of the Division of Workforce Services a notice of the election at least thirty (30) days prior to the effective date of the election.

(2) The election shall exclude any services described in § 11-10-210(a)(4).

(3) Any political subdivision electing coverage under this section shall make payments in lieu of contributions with respect to benefits attributable to the employment as provided with respect to nonprofit organizations in § 11-10-713(c) and (f).

(b) The provisions in § 11-10-509 with respect to benefit rights based on service for state and nonprofit institutions of higher education shall be applicable also to service covered by an election under this section.

(c) The amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in § 11-10-713(d) with respect to similar payments of nonprofit organizations.

(d) An election under this section may be terminated by filing with the director written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. The termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

History. Acts 1941, No. 391, § 8; 1971, No. 35, § 16; 1977, No. 376, § 14; A.S.A. 1947, § 81-1111; Acts 2019, No. 910, § 231. substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1)(B).

Amendments. The 2019 amendment

SUBCHAPTER 5 — BENEFITS GENERALLY

SECTION.

- 11-10-501. Payment.
- 11-10-502. Weekly benefit amount.
- 11-10-504. Maximum benefits payable.
- 11-10-505. Failure of base-period employer to respond.
- 11-10-506. Seasonal employment and benefit rights — Definitions.
- 11-10-507. Eligibility — Conditions — Definitions.
- 11-10-508. Eligibility — Labor dispute — Exceptions.
- 11-10-512. Disqualification — Satisfaction.
- 11-10-513. Disqualification — Voluntarily leaving work — Definitions.
- 11-10-514. Disqualification — Discharge for misconduct.
- 11-10-515. Disqualification — Failure or refusal to apply for or accept suitable work.
- 11-10-516. Disqualification — Refusal to report after layoff.
- 11-10-517. Disqualification — Receipt of other remunerations.
- 11-10-519. Disqualification — Penalty for false statement or misrepresentation.
- 11-10-520. Claims — Posting of information by employer.
- 11-10-521. Claims — Filing — Notice to last employer.
- 11-10-522. Claims — Determination.
- 11-10-523. Board of Review created —

SECTION.

- Administrative appeal — Claims.
- 11-10-524. Claims — Administrative appeal — Filing and hearing.
- 11-10-526. Claims — Administrative appeal — Procedure.
- 11-10-527. Claims — Conclusiveness of determinations and decisions.
- 11-10-528. Claims — Administrative appeal — Rule of decision.
- 11-10-529. Claims — Decision of Board of Review — Judicial review.
- 11-10-530. Claims — Administrative appeal — Representation.
- 11-10-532. Claims — Recovery.
- 11-10-533. Claims — Investigation of claims filed by state employees.
- 11-10-534. Extended benefits — Definitions.
- 11-10-535. Extended benefits — Effect of provisions relating to regular benefits.
- 11-10-536. Extended benefits — Eligibility.
- 11-10-539. Extended benefits — Period and computations.
- 11-10-541. Extended benefits — Overpayments.
- 11-10-543. Extended benefits — Failure to accept or seek suitable work — Definition.
- 11-10-544. Reciprocal arrangements with state and federal agencies.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

Acts 2015, No. 690, § 8: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible

persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015.”

Acts 2019, No. 453, § 11: Oct. 1, 2019.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections

of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

11-10-501. Payment.

(a) All benefits provided in this chapter shall be payable from the Unemployment Compensation Fund.

(b) All benefits shall be paid through Division of Workforce Services offices, in accordance with such rules as the Director of the Division of Workforce Services may prescribe.

History. Acts 1941, No. 391, § 3; 1971, No. 35, § 7; A.S.A. 1947, § 81-1104; Acts 1991, No. 100, § 25; 2019, No. 315, § 819; 2019, No. 910, § 232.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (b).

The 2019 amendment by No. 910, in (b), substituted “Division of Workforce Services” for “Department of Workforce Services” and “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services”.

11-10-502. Weekly benefit amount.

(a) For initial claims filed on or after the first day of the calendar quarter following July 22, 2015, an insured worker’s weekly benefit amount shall be an amount equal to one-twenty-sixth ($\frac{1}{26}$) of his or her average wages for insured work paid during the four (4) quarters of his or her base period.

(b)(1) A weekly benefit amount shall not be less than twelve percent (12%) of the state average weekly wage for insured employment for the preceding calendar year for benefit years beginning after June 30, 1987.

(2) However, effective July 1, 2012, the weekly minimum benefit amount established in subdivision (b)(1) of this section shall not be greater than eighty-one dollars (\$81.00).

(c)(1) A weekly benefit amount shall not be greater than sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the state average weekly wage for insured employment for the previous calendar year for benefit years beginning after June 30, 1985.

(2) However, effective July 1, 2012, the weekly maximum benefit amount established in subdivision (c)(1) of this section shall not be greater than four hundred fifty-one dollars (\$451).

(d) Weekly benefit amounts that are not in even multiples of one dollar (\$1.00) shall be rounded to the next lower full dollar amount.

(e) On June 1 of each year, the Director of the Division of Workforce Services shall determine the average weekly wage for insured employment for the preceding calendar year in the following manner:

(1) The sum of the total monthly employment reported for the calendar year shall be divided by twelve (12) to determine the average monthly employment;

(2) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage; and

(3) The average annual wage shall be divided by fifty-two (52) to determine the average weekly wage for insured employment.

History. Acts 1941, No. 391, § 3; 1943, No. 138, § 26; 1943, No. 263, § 1; 1947, No. 398, § 2; 1949, No. 155, § 3; 1955, No. 395, § 5; 1959, No. 13, § 1; 1963, No. 93, § 4; 1971, No. 35, § 7; 1977, No. 366, § 5; 1981, No. 43, § 2; 1983, No. 482, § 7; 1985, No. 8, § 3; 1985, No. 9, § 3; A.S.A. 1947, § 81-1104; Acts 1987, No. 753, § 6; 1991, No. 48, § 2; 2001, No. 1367, § 3; 2001, No. 1757, § 8; 2003, No. 353, § 2; 2011, No. 861, § 1; 2015, No. 412, § 2; 2019, No. 910, § 233.

A.C.R.C. Notes. Acts 2015, No. 412, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The State of Arkansas needs to take steps to increase and ensure the

financial stability of the Unemployment Compensation Fund;

"(2) Arkansas's unemployment costs to employers as the result of benefit amounts are higher than the surrounding states; and

"(3) Adjusting the benefit amounts to be paid to claimants will increase the state's ability to maintain the Unemployment Compensation Fund and to compete in attracting businesses."

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in the introductory language of (e).

11-10-504. Maximum benefits payable.

(a) For initial claims filed on or after January 1, 2018, the maximum potential benefits of an insured worker in a benefit year shall be the amount equal to the lesser of:

(1) Sixteen (16) times his or her weekly benefit amount; or

(2) One-third ($\frac{1}{3}$) of his or her wages for insured work in his or her base period.

(b) If the total amount of benefits is not a multiple of his or her weekly benefit amount, it shall be computed to the next higher multiple of his or her weekly benefit amount.

History. Acts 1941, No. 391, § 3; 1943, No. 138, § 28; 1947, No. 398, § 2; 1949, No. 155, § 3; 1955, No. 395, § 7; 1959, No. 13, § 1; 1981, No. 43, § 3; 1983, No. 482, § 10; A.S.A. 1947, § 81-1104; Acts 2011, No. 861, § 2; 2015, No. 412, § 3; 2017, No. 734, § 3.

A.C.R.C. Notes. Acts 2015, No. 412, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The State of Arkansas needs to take steps to increase and ensure the financial stability of the Unemployment Compensation Fund;

"(2) Arkansas's unemployment costs to employers as the result of benefit amounts are higher than the surrounding states; and

"(3) Adjusting the benefit amounts to be paid to claimants will increase the

state's ability to maintain the Unemployment Compensation Fund and to compete in attracting businesses."

Acts 2017, No. 734, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The State of Arkansas needs to take steps to ensure the financial stability of the Unemployment Compensation Fund;

"(2) Arkansas's unemployment costs to employers are higher than some surrounding states;

"(3) Arkansas employers have been paying increased unemployment taxes

since 2009 as a result of a recession which dramatically increased unemployment; and

"(4) Making the changes set forth in this bill will increase the stability of the Unemployment Compensation Fund and increase the state's employers' ability to compete in attracting businesses."

Amendments. The 2017 amendment substituted "January 1, 2018" for "the first day of the calendar quarter following July 22, 2015" in the introductory language of (a); and substituted "Sixteen (16)" for "Twenty (20)" in (a)(1).

11-10-505. Failure of base-period employer to respond.

(a)(1)(A) A notice to the base-period employer shall be mailed or posted online, or both, promptly to each employer appearing on the claimant's monetary determination as a base-period employer.

(B) Employers may choose to receive and respond to notice under this section through the mail or online, or both.

(2)(A) If any base-period employer fails to respond to the notice to the base-period employer within fifteen (15) calendar days, the employer shall be deemed to have waived the employer's right to respond.

(B) The Director of the Division of Workforce Services may accept the statement given by the claimant as his or her reason for separation from the base-period employer and may base his or her determination on the statement given by the claimant.

(b) The director shall adopt rules necessary to carry out this section.

(c) The director shall make available on the website of the Division of Workforce Services a program that will allow employers the option to receive and respond to notice under this section.

History. Acts 1941, No. 391, § 3; 1981, No. 43, § 5; A.S.A. 1947, § 81-1104; Acts 2011, No. 1229, § 1; 2019, No. 910, §§ 234, 235.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the

Department of Workforce Services" in (a)(2)(B); and, in (c), deleted "On or before January 1, 2012" from the beginning and substituted "Division of Workforce Services" for "Department of Workforce Services".

11-10-506. Seasonal employment and benefit rights — Definitions.

(a)(1) As used in this section, the term "seasonal industry" means an industry in which, because of the seasonal nature thereof, it is customary to lay off forty percent (40%) or more of the average monthly number of workers for at least four (4) consecutive months during a regularly recurring period of each year and in which industry it is highly impracticable or impossible to continue seasonal operations throughout a period or periods of one (1) year in length. However, the

total cessation of operations is not a prerequisite to classification as a seasonal industry.

(2) After a study of previous employment records, and after investigation and hearing, the Director of the Division of Workforce Services shall determine the normal seasonal period or periods during which workers are ordinarily employed for the purpose of carrying on seasonal operations in each seasonal industry. Until the determination by the director, no industry shall be deemed to be seasonal. The director may initiate a study of an industry upon his or her own motion or upon a request filed with the director by any employing unit or person that would be affected by any determination made as a result of such a study. If a study is made, it shall be mandatory for the director to make his or her determination and report thereon within ninety (90) days after written application for the determination has been filed. If the director initiates the study of an industry upon his or her own motion and finds that the industry meets the seasonal requirements set forth in this section, he or she shall make his or her determination and report within ninety (90) days after the study is initiated. In either event, the industry shall be classified as a seasonal industry effective on the January 1 immediately following the date of the director's determination. Provided that, any employer who is classified as a seasonal employer under these provisions may make a written request to the director asking not to be treated as a seasonal employer. If the request is approved, treatment as a seasonal employer will cease effective January 1 of the following calendar year.

(b)(1) The director shall conduct, from time to time, studies of industries previously determined to be seasonal for the purpose of determining whether they should continue to be so classified.

(2) If, after study, investigation, and hearing, the director finds that an industry no longer meets the seasonal requirements set forth herein, he or she shall issue a determination to that effect within ninety (90) days after the study was initiated.

(3) The industry shall cease to be classified as a seasonal industry effective on the January 1 immediately following the date of determination.

(c)(1) The term "seasonal worker" means an individual who is employed in a seasonal industry, except that the term shall not include workers in industries where employment continues substantially throughout the year.

(2) Any individual having earnings in a seasonal industry having a seasonal operating period within the limits shown in Column A of the table below and who has base period wages earned in the seasonal industry in the nonoperating season of the seasonal industry in an amount equal to the amount specified on the corresponding line of Column B of this table shall be considered as having employment which continues substantially throughout the year and shall not be considered a seasonal worker.

A	B
Operating Period of Seasonal Industry	Wages Earned in Seasonal Industry During Nonoperating Period
7 - 8 Months	24 Times Weekly Benefit Amount
2 - 6 Months	30 Times Weekly Benefit Amount

(d) For purposes of this section, the term “average monthly number of workers” means the aggregate number of workers employed in the industry during the pay period that includes the twelfth day of each month in the peak period of operation divided by the number of months during the period.

(e) The director shall prescribe fair and reasonable general rules consistent with this chapter and not inconsistent with general law applicable to seasonal workers for determining the period during which benefits shall be payable to them. The director may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the director finds necessary and consistent with respect to such other matters relating to benefits for seasonal workers as the director finds necessary and consistent with general law.

(f) The business of exploring for and the mining of coal and other minerals for use as fuel shall not be deemed to be a seasonal industry as defined in this section.

History. Acts 1941, No. 391, § 3; 1943, No. 174, §§ 1, 3; 1953, No. 162, § 1; 1981, No. 43, § 4; 1983, No. 482, § 12; A.S.A. 1947, §§ 81-1104, 81-1110; Acts 1989, No. 420, § 5; 1991, No. 100, § 26; 2001, No. 1367, § 4; 2019, No. 910, § 236.

Amendments. The 2019 amendment deleted designation (a)(2)(A); and substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the first sentence of (a)(2).

11-10-507. Eligibility — Conditions — Definitions.

An insured worker shall be eligible to receive benefits with respect to any week only if the Director of the Division of Workforce Services finds that:

- (1) CLAIM FOR BENEFITS. He or she has made a claim for benefits with respect to such week in accordance with such rules as the director may prescribe;
- (2) REGISTRATION AND REPORTING. He or she has registered for work at and thereafter continued to report to a Division of Workforce Services office in accordance with such rules as the director may prescribe. The director, by rule, may waive or alter either or both of the requirements of this subdivision (2) as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he or she finds that compliance with these requirements would be oppressive or would be inconsistent with the purpose of this chapter. However, no such rules shall conflict with § 11-10-501;

(3) ABLE TO WORK AND AVAILABLE FOR WORK.

(A)(i) The worker is unemployed, is physically and mentally able to perform suitable work, and is available for the work. Mere registration and reporting at a local employment office shall not be conclusive evidence of ability to work, availability for work, or willingness to accept work unless the individual is doing those things which a reasonably prudent individual would be expected to do to secure work.

(ii) In determining suitable work under this section and for refusing to apply for or accept suitable work under § 11-10-515, part-time work shall be considered suitable work unless the majority of weeks of work in the period used to determine monetary eligibility are from full-time work.

(iii) In determining suitable work under this section or under § 11-10-515 for a worker who is on an approved medical leave from his or her last employer due to the unavailability of light-duty work, light-duty work shall be considered suitable work unless the majority of the number of weeks of work within the period used to determine monetary eligibility were weeks spent performing work that the worker is currently unable to perform due to his or her medical restrictions.

(B) Persons who are on layoff and who are attending a state vocational school for the purpose of upgrading or improving their job skills shall be considered available for employment so long as they make reasonable efforts to secure employment unless, or until, they refuse suitable employment or referral or recall to suitable work. However, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the director by reason of the application of the provisions of subdivision (3)(A) of this section relating to availability for work.

(C) For the purpose of this subdivision (3), the approval by the director of training for an individual shall be based on the following considerations:

(i) The claimant's skills must be obsolete, or the demands for his or her skills in his or her labor market must be minimal and not likely to improve;

(ii) The claimant must possess aptitudes or skills which can be usefully supplemented within a short time by retraining;

(iii) The training must be for an occupation for which there is a substantial and recurring demand; and

(iv) The claimant must produce evidence of continued attendance and satisfactory progress.

(D) In the event of the death of an individual's immediate family member, the eligibility requirements of availability for that individual shall be waived for the day of the death and for six (6) consecutive calendar days thereafter. For the purposes of this subdivision (3), "immediate family member" means a spouse, child, parent, brother, sister, grandchild, or grandparent of the individual.

(E) An individual on short-term layoff who expects to be recalled by his or her employer to a full-time job and whose employer intends to recall the individual to a full-time job within ten (10) weeks after the initial date of his or her layoff shall not be required during the layoff to register for work at a division office or to seek other work.

(F) Any individual who is not actively engaged in seeking work because he or she is before any court of the United States or of any state pursuant to a lawfully issued summons to appear for jury duty shall not be disqualified under this subdivision (3).

(G) No individual shall be considered unavailable for work under this subdivision (3) during the entire week if he or she is required to withdraw from the labor market for less than four (4) days of the week because of a compelling personal emergency.

(H) The individual participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director, as provided for in section 4 of Pub. L. No. 103-152, unless the director determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services;

(4) WAITING PERIOD. He or she has been unemployed for a waiting period of one (1) week. A week shall not be counted as a week of unemployment for the purposes of this subdivision (4):

(A) Unless it occurs within the benefit year which includes the week with respect to which he or she claims payment of benefits;

(B) If benefits have been paid with respect thereto; and

(C) Unless the individual was eligible for benefits with respect thereto as provided in this section and §§ 11-10-512 — 11-10-519, except for the requirements of this subdivision (4); and

(5)(A) QUALIFYING WAGES. For any benefit year, he or she has during his or her base period been paid wages in at least two (2) quarters of his or her base period for insured work, and the total wages paid during his or her base period equal not less than thirty-five (35) times his or her weekly benefit amount.

(B) REQUALIFYING WAGES. For all benefit years, an individual shall not requalify on a succeeding benefit year claim unless he or she has been paid wages for insured work equal to not less than thirty-five (35) times his or her weekly benefit amount and has wages paid for insured work in at least two (2) calendar quarters of his or her base period and, subsequent to filing the claim that established his or her previous benefit year, he or she has had insured work and was paid wages for insured work equal to ten (10) times his or her weekly benefit amount.

(C) With respect to weeks of unemployment, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this section, the term "previously uncovered services" means services:

(i) Which were not employment as defined in § 11-10-210(a) and were not services covered pursuant to § 11-10-210(d) at any time during the one-year period; and

(ii) Which are:

(a) Agricultural labor, as defined in § 11-10-210(f)(1); or

(b) Services performed by an employee of a political subdivision of this state, as provided in § 11-10-210(a)(2)(B), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in § 11-10-210(a)(3), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

(D) For the purpose of this subdivision (5), wages shall be counted as “wages for insured work” for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the date on which the employing unit by which the wages were paid has satisfied the conditions of § 11-10-209 with respect to becoming an employer.

History. Acts 1941, No. 391, § 4; 1943, No. 138, § 29; 1947, No. 398, § 3; 1949, No. 155, § 4; 1953, No. 162, § 2; 1959, No. 13, § 3; 1963, No. 93, § 5; 1971, No. 35, § 8; 1973, No. 329, § 5; 1975 (Extended Sess., 1976), No. 1083, § 5; 1977, No. 376, § 7; 1979, No. 492, § 4; 1979, No. 922, § 4; 1981, No. 43, §§ 6, 7; 1983, No. 482, §§ 13, 14; 1985, No. 8, § 5; 1985, No. 9, § 5; A.S.A. 1947, § 81-1105; reen. Acts 1987, No. 672, § 4; Acts 1987, No. 753, § 12; 1989, No. 420, § 6; 1991, No. 48, § 3; 1991, No. 100, § 27; 1993, No. 6, § 5; 1995, No. 519, § 5; 1999, No. 1116, § 9; 2003, No. 1223, § 4; 2009, No. 653, §§ 2, 3; 2009, No. 802, § 3; 2011, No. 861, § 3; 2019, No. 315, § 820; 2019, No. 453, §§ 1, 2; 2019, No. 910, §§ 237-239.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regula-

tions” in (1) and twice in (2); and substituted “rule” for “regulation” in (2).

The 2019 amendment by No. 453 redesignated (3)(A) as (3)(A)(i) and (3)(A)(ii) and added (3)(A)(iii); in (5)(B), inserted the fourth occurrence of “insured” and substituted “ten (10) times” for “eight (8) times”; and made stylistic changes.

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of the section; substituted “Division of Workforce Services” for “Department of Workforce Services” in (2); and substituted “division” for “department” in (3)(E).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

ANALYSIS

Availability for Work.
Suitable Work.

Availability for Work.

Even if claimant may have been hesitant to ask for rides, the Board of Review failed to find that he was unwilling to use the option if he found available work; thus, claimant had offered an alternative

form of transportation to and from work and the board’s denial of unemployment benefits was reversed. *Debnam v. Dir., Dep’t of Workforce Servs.*, 2015 Ark. App. 537, 471 S.W.3d 657 (2015).

Board of Review did not err in finding that the employee was ineligible for benefits due to not being available for work given his testimony that he was not available to work due to a death in the family, childcare, and other dependent-care ar-

rangements. *Fowlkes v. Dir., Dep't of Workforce Servs.*, 2017 Ark. App. 56, 512 S.W.3d 667 (2017).

Suitable Work.

Board of Review's determination that the claimant was disqualified from benefits because she failed without good

cause to accept suitable work when offered was remanded because the Board did not set forth a factual basis for concluding that the claimant's training was without the approval of the director. *Fraysher v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 603 (2013).

11-10-508. Eligibility — Labor dispute — Exceptions.

(a) If so found by the Director of the Division of Workforce Services, no individual may serve a waiting period or be paid benefits for the duration of any period of unemployment if he or she lost his or her employment or has left his or her employment by reason of a labor dispute other than a lockout at the factory, establishment, or other premises at which he or she was employed, regardless of whether or not the labor dispute causes any reduction or cessation of operations at the factory, establishment, or other premises of the employer, as long as the labor dispute continues, and thereafter for such reasonable period of time, if any, as may be necessary for that factory, establishment, or other premises to resume normal operation.

(b) However, this section shall not apply if it is shown that the individual is not participating in or directly interested in the labor dispute and he or she does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the factory, establishment, or other premises at which the labor dispute occurs, any of whom are participating in or directly interested in the labor dispute.

(c) If in any case, separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

History. Acts 1941, No. 391, § 4; 1955, No. 395, § 8; 1959, No. 99, § 1; A.S.A. 1947, § 81-1105; Acts 2019, No. 910, § 240.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

11-10-512. Disqualification — Satisfaction.

(a) "WEEK OF UNEMPLOYMENT" DEFINED. A "week of unemployment" as used in this section and § 11-10-519 means a week during which, except for a disqualification, an individual would be eligible for benefits.

(b) "WEEK OF DISQUALIFICATION" DEFINED. A "week of disqualification" as used in this section and § 11-10-519(a)(2) shall be satisfied by a week of unemployment as defined in this section or by a week of employment during which the employee has earnings in an amount equal to his or her weekly benefit amount.

History. Acts 1941, No. 391, § 5; 1949, No. 155, § 5; 1953, No. 162, § 3; 1955, No. 395, § 20; 1971, No. 35, § 9; A.S.A. 1947, § 81-1106; Acts 2001, No. 1367, § 5; 2019, No. 453, § 3.

Amendments. The 2019 amendment, in (a), substituted “this section and § 11-

10-519” for “this section and §§ 11-10-514, 11-10-515, 11-10-517, and 11-10-519”; substituted “as used in this section” for “under §§ 11-10-514(a), 11-10-515” in (b); and deleted former (b)(2).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

11-10-513. Disqualification — Voluntarily leaving work — Definitions.

(a)(1) If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits if he or she voluntarily and without good cause connected with the work left his or her last work.

(2)(A) An individual working as a temporary employee will be deemed to have voluntarily quit employment and will be disqualified for benefits under this subsection if upon conclusion of his or her latest assignment, the temporary employee without good cause failed to contact the temporary help firm for reassignment, provided that the employer advised the temporary employee at the time of hire that he or she must report for reassignment upon conclusion of each assignment and that unemployment benefits may be denied for failure to do so.

(B)(i) As used in this subsection, “temporary help firm” means a firm that hires its own employees and assigns them to clients to support or supplement the client’s workforce in work situations such as employees’ absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(ii) The term does not include employee leasing companies regulated under § 11-10-717(e).

(C) “Temporary employee” means an employee assigned to work for the clients of a temporary help firm.

(3) Any person who leaves his or her last work to comply with the order of a correctional institution or to satisfy the terms of his or her parole or probation shall be deemed to have left work “voluntarily and without good cause connected with the work”.

(4) The disqualification shall continue until, subsequent to the effective date of the disqualification, he or she has had at least thirty (30) days of employment covered by an unemployment compensation law of this state, another state, or the United States.

(b) No individual shall be disqualified under this section if after making reasonable efforts to preserve his or her job rights he or she left his or her last work:

(1) Due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification;

(2)(A) Because of illness, injury, pregnancy, or disability of the individual or a member of the individual’s immediate family.

(B) As used in subdivision (b)(2)(A) of this section, “immediate family member” means a spouse, child, parent, brother, sister, grandchild, or grandparent of the individual;

(3)(A) Due to domestic violence that causes the individual reasonably to believe that the individual’s continued employment will jeopardize the safety of the individual or a member of the individual’s immediate family.

(B) As used in subdivision (b)(3)(A) of this section, “immediate family member” means a spouse, child, parent, brother, sister, grandchild, or grandparent of the individual; or

(4) To accompany the individual’s spouse because of a change in the location of the spouse’s employment that makes it impractical to commute.

(c)(1) No individual shall be disqualified under this section if he or she left his or her last work because he or she voluntarily participated in a permanent reduction in the employer’s workforce after the employer announced a pending reduction in its workforce and asked for volunteers.

(2) Such actions initiated by the employer shall be considered layoffs regardless of any incentives offered by the employer to induce its employees to volunteer.

(3) Any incentives received shall be reported under § 11-10-517.

History. Acts 1941, No. 391, § 5; 1947, No. 398, § 4; 1949, No. 155, § 5; 1953, No. 162, § 3; 1955, No. 395, §§ 9, 10; 1963, No. 93, § 6; 1967, No. 248, § 1; 1977, No. 366, § 6; 1979, No. 492, § 7; 1979, No. 922, § 7; 1983, No. 482, § 16; A.S.A. 1947, § 81-1106; Acts 1997, No. 234, § 12; 2003, No. 1223, § 5; 2005, No. 902, § 2; 2007, No. 490, § 5; 2009, No. 802, § 4; 2019, No. 453, § 4; 2019, No. 910, § 241.

Amendments. The 2019 amendment by No. 453 substituted “the effective date of the disqualification” for “filing a claim” in (a)(4).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

ANALYSIS

Good Cause.

Good Cause Not Shown.

Personal Emergency.

Preservation of Job Rights.

Temporary Employment.

Voluntary Leaving Not Shown.

Voluntary Leaving Shown.

Good Cause.

Board of Review erred in denying unemployment benefits, because reasonable minds could not conclude, on the basis of the facts actually found by the Board, that an employee lacked good cause connected with the work for terminating his employ-

ment when the employee was not being compensated; the employee did not allege a substantial decrease, but rather no compensation at all, and the Board made a specific finding that the employee showed he continued to work for several weeks without pay. *Ballard v. Director*, 2012 Ark. App. 371 (2012).

Board of Review erred under subdivision (a)(1) of this section in denying a claimant unemployment benefits based on a finding that she quit her previous employment as a dental assistant voluntarily and without good cause because the employer admitted that he continued making inappropriate sexual remarks regarding the claimant in front of patients. *Pepper v.*

Director, Dep't of Workforce Servs., 2012 Ark. App. 605 (2012).

Board of Review's finding that the employee voluntarily quit her employment without good cause connected to the work was not supported by substantial evidence, as the employee presented evidence that she experienced verbal lashings from the employer and physical threats by a resident while working as community manager and the employer acknowledged that a resident threatened the employee's physical safety but the employer took no remedial action the court could see. *Davis v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 260 (2014).

Board of Review's conclusion that an employee had not established good cause for leaving work was not supported by substantial evidence because she had significant and frequent contact with persons particularly vulnerable to contracting COVID-19, a highly contagious and potentially deadly virus, and the employer presented no evidence to refute the employee's testimony or to establish the precautions it put into place to prevent possible exposure. *Keener v. Dir.*, Dep't of Workforce Servs., 2021 Ark. App. 88, 618 S.W.3d 446 (2021).

Good Cause Not Shown.

Lack of transportation is not a reason connected with the work to establish good cause for failing to accept suitable work. *Nelson v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 533 (2013).

Unemployment benefits were denied because an employer's decision to not extend the practice of helping the claimant with travel expenses with a bonus did not create good cause for the applicant to quit. Also, there was no good cause to quit based on a reassignment to a different position; there was no evidence that the applicant complained about a loss of pay or that the new position was more dangerous. *Allen v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 233, 434 S.W.3d 384 (2014).

Board of Review's decision that an employee left his last work without good cause connected with work was supported by substantial evidence where he walked off the job without permission and never returned, he gave conflicting information in his unemployment applications, and he

stated that cursing was not unusual in the workplace and had not caused him to quit in the past. *Fowlkes v. Dir.*, Dep't of Workforce Servs., 2017 Ark. App. 56, 512 S.W.3d 667 (2017).

Personal Emergency.

Board of Review erred in denying an employee's claim for unemployment benefits based on voluntary unemployment because the employee quit her employment due to a family situation, she asked the employer about a change of duties prior to quitting, but none were available, the employee's personal emergency did not disappear when her ex-husband moved out of state and was no longer being available for childcare, and she was unable to afford alternate childcare. *Thompson v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 303 (2014).

Preservation of Job Rights.

Under subdivision (a)(1) of this section, appellant was not entitled to unemployment benefits as she left her last employment without making reasonable efforts to preserve her job rights because she did not provide her employer with her release to return to work, and because she did specifically ask, and only assumed, she had been fired. *Foster v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 190 (2013).

Board of Review's denial of unemployment benefits to appellant was reversed because substantial evidence did not support the Board's finding that appellant voluntarily left her job due to a disability and failed to make any reasonable efforts to preserve her job rights before quitting under subdivisions (a)(1) and (b)(2)(A) of this section, as appellant did take active steps to preserve her job rights by requesting a transfer to another position that could accommodate her disability. *Alexander v. Dir.*, Dep't of Workforce Servs., 2013 Ark. App. 225 (2013).

It was proper to deny unemployment-compensation benefits to a teacher on the basis that she voluntarily left her work without good cause because she had the right to present information to the school board as to why it should not accept the superintendent's recommendation to terminate her employment. *Davis v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 515 (2013).

Denial of unemployment benefits was affirmed, given that although the worker had been interrupted several times during her distribution of medicine at her place of employment, a long-term care and rehabilitation facility, and she was behind when she was told to go to the dining room, the worker never explained the situation to the administrator or asked for help in distributing medication or supervising the dinner; she was required to make reasonable efforts to preserve her job rights before simply walking off the job, which the Board of Review found she did not do, and substantial evidence supported that conclusion. *Buck v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 685, 449 S.W.3d 705 (2014).

Temporary Employment.

Substantial evidence supported the decision of the Board of Review that a temporary employee voluntarily quit her employment and was disqualified from unemployment benefits, because she was offered work assignments after her last job ended and she declined each assignment without good cause. *Nelson v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 533 (2013).

There is no authority that would allow an employee's pre-employment statements regarding the terms of her temporary employment to qualify as a prospective resignation that the employer could then accelerate at any time, and acceleration of an employee's separation from work, which does not flow from the employee's voluntary resignation, is simply called termination. Without substantial evidence to support the finding that the temporary employee voluntarily left her last work without good cause, the judgment was reversed for an award of benefits. *Cline v. Dir., Dep't of Workforce Servs.*, 2016 Ark. App. 106, 483 S.W.3d 828 (2016).

Voluntary Leaving Not Shown.

Because the claimant repeatedly brought her complaints to her superiors to no avail and the employer was unavailable to respond, it was futile for her to request a leave of absence or an adjustment of her hours; substantial evidence did not support that she voluntarily left work without good cause. *Adams v. Dir., Dep't of Workforce Servs.*, 2016 Ark. App. 200, 487 S.W.3d 405 (2016).

Voluntary Leaving Shown.

Board of Review's decision denying appellant unemployment benefits under this section on the basis that he voluntarily left his job as a carpenter without good cause connected to the work was supported by substantial evidence, because appellant made no attempt to go to his supervisor's house to report for work when he had not been contacted by telephone. *Rivas v. Director*, 2013 Ark. App. 91 (2013).

Unemployment benefits were denied because an applicant voluntarily left his job after his employer discontinued travel assistance; the applicant abandoned his job when he did not contact a plant manager about continued employment. *Allen v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 233, 434 S.W.3d 384 (2014).

Unemployment benefits were not awarded because a benefits claimant voluntarily quit her job without good cause; by the time the claimant had formally resigned, an incident of alleged elder abuse had already been reported, and the claimant decided to quit before a meeting was held about the incident. The reasons that the claimant gave for not going to higher management were unpersuasive. *Jones v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 668 (2014).

Board of Review's decision that the employee voluntarily left work without good cause and failed to address his concerns was supported by evidence the employee was suspended after a positive drug test but returned to work with full compensation, the employer made a reasonable request for a doctor's verification that prescription medication would not interfere with the employee's job, and the employee terminated his employment without voicing concerns to a supervisor or management. *Voss v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 521, 471 S.W.3d 661 (2015).

Claimant was properly disqualified for unemployment benefits as she voluntarily left her work without good cause because, when she learned that a coworker was going to tell the employer's wife about the nude pictures she had sent to the employer, she left work, but there was no evidence that the employer fired her; although she exchanged emails with the employer two days after she quit, she did not ask him about returning to work;

there was evidence that the employer did not want the claimant to quit, he was expecting her to return to work, and he would have let her stay if she wanted; and, although the claimant testified that she did not return to her work because she

was afraid of the employer, the Board of Review found her fear was unwarranted. *Ridley v. Dir., Dep't of Workforce Servs.*, 2016 Ark. App. 465, 503 S.W.3d 856 (2016).

11-10-514. Disqualification — Discharge for misconduct.

(a)(1) If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection with the work.

(2) In cases of discharge for absenteeism, the individual shall be disqualified for misconduct in connection with the work if the discharge was pursuant to the terms of a bona fide written attendance policy, regardless of whether the policy is a fault or no-fault policy.

(3)(A) Misconduct in connection with the work includes the violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties; and

(B) Without limitation:

(i) Disregard of an established bona fide written rule known to the employee; or

(ii) A willful disregard of the employer's interest.

(4)(A) Misconduct in connection with the work shall not be found for instances of poor performance unless the employer can prove that the poor performance was intentional.

(B) An individual's repeated act of commission, omission, or negligence despite progressive discipline constitutes sufficient proof of intentional poor performance.

(C) An individual who refuses an alternate suitable job rather than being terminated for poor performance shall be considered discharged for misconduct in connection with the work.

(5) The disqualification under subsection (a) of this section shall continue until, subsequent to the effective date of the disqualification, the individual has had at least thirty (30) days of employment covered by an unemployment compensation law of this state, another state, or the United States.

(b)(1) If an individual is discharged from his or her last work for misconduct in connection with the work on account of dishonesty, drinking on the job, reporting for work while under the influence of intoxicants, including a controlled substance, or willful violation of bona fide written rules or customs of the employer including those pertaining to his or her safety or the safety of fellow employees, persons, or company property, harassment, unprofessional conduct, or insubordination, he or she shall be disqualified until, subsequent to the date of the disqualification, the individual has been paid wages in two (2) quarters for insured work totaling not less than thirty-five (35) times his or her weekly benefit amount.

(2)(A) If an individual is discharged for testing positive for an illegal drug pursuant to a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide written drug policy, the individual is disqualified until, subsequent to the date of the disqualification, the claimant has been paid wages in two (2) quarters for insured work totaling not less than thirty-five (35) times his or her weekly benefit amount.

(B)(i) Any weekly benefits payable subsequent to the date of the disqualification under subdivision (b)(2)(A) of this section shall be terminated.

(ii) The termination shall apply only to benefits payable within the benefit year of the claim with respect to which the claimant is disqualified for testing positive for an illegal drug under subdivision (b)(2)(A) of this section.

(C) If an individual is disqualified under subdivision (b)(2)(A) of this section, a benefit paid to the individual with respect to any week of unemployment after the discharge shall not be charged to the account of the employer that discharged the individual if the benefit is based upon wages paid to the individual for employment before the discharge by the employer that discharged the individual.

(c)(1) If so found by the director, an individual shall be disqualified for benefits if he or she is suspended from his or her last work for misconduct in connection with the work.

(2) Except as otherwise provided, the disqualification shall be for the duration of the suspension or eight (8) weeks, whichever is the lesser.

History. Acts 1941, No. 391, § 5; 1943, No. 138, § 30; 1947, No. 398, § 4; 1949, No. 155, § 5; 1953, No. 162, § 3; 1955, No. 395, §§ 11, 12; 1971, No. 35, § 9; 1983, No. 482, § 17; A.S.A. 1947, § 81-1106; Acts 1987, No. 753, § 14; 1989 (3rd Ex. Sess.), No. 95, § 1; 1993, No. 6, § 7; 1999, No. 1116, § 11; 2001, No. 770, § 1; 2007, No. 454, § 1; 2009, No. 802, § 5; 2011, No. 861, § 4; 2011, No. 1040, § 2; 2013, No. 956, § 1; 2013, No. 1077, §§ 1-3; 2015, No. 690, § 1; 2019, No. 453, § 5; 2019, No. 910, § 242.

Amendments. The 2019 amendment by No. 453 substituted "the effective date of the disqualification" for "filing a claim" in (a)(5).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

ANALYSIS

Evidence.

Misconduct.

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—Evidence.

—Misconduct Found.

—Not Shown.

—Quality of Work Product.

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Evidence.

Board of Review erred in finding that an employee was disqualified from receiving unemployment benefits due to misconduct connected with the work because the pre-

ponderance of the evidence did not indicate that the employee overtly refused to perform a task assigned by his supervisor, the facts surrounding the employee's discharge that were recited in the decision were incorrect, and the evidence from the employer in the record was contradictory as to when the employee was told to complete the job, when he allegedly left work early, and when he was discharged. *Green v. Director, Dep't of Workforce Servs.*, 2015 Ark. App. 200 (2015).

Employer failed to establish by a preponderance of the evidence that the employee, a ranch hand, was guilty of misconduct that would disqualify her from receipt of unemployment benefits under subsection (a) of this section because the Board of Review found the employee to be a credible witness, noting that she was only following her supervisor's instructions to ride along and get supplies. *Rockin J Ranch, LLC v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 465, 469 S.W.3d 368 (2015).

Misconduct.

Denial of unemployment benefits based on misconduct was supported by substantial evidence, because the testimony from the employer's director of asset protection was sufficient evidence of misconduct, as he was well aware of the ethics investigation findings, and an ethics investigation team received evidence of the employee's misconduct from three sources; neither the appeal tribunal nor the review board was bound by common law or statutory rules of evidence. *Blaylock v. Director, Dep't of Workforce Servs. & Wal-Mart*, 2012 Ark. App. 538 (2012).

Employer purportedly told appellant on three occasions to return to work, and, according to the employer, appellant told the employer to shut up and that he did not have the guts to run his own business. If believed, this was willful conduct, and it showed a disregard of the standard of behavior an employer has the right to expect from an employee. *Valentine v. Director, Dep't of Workforce Servs.*, 2012 Ark. App. 612 (2012).

Employee who was terminated for failing to follow an alleged safety policy was entitled to recover unemployment compensation despite the employer's contention that he was terminated for misconduct for failing to report a forklift

accident; the employer's witness could not verify the existence or extent of any such safety policy or procedure. *Cochran v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 72 (2013).

Board of Review did not err in upholding a decision that an employee was not eligible for unemployment benefits under subsection (b) of this section on the ground that the employee was discharged for misconduct because the Board made a factual finding that the weight of the evidence showed that the employee was fired for falsifying documentation. *Barnard v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 143 (2013).

Board of Review did not err in finding that an employee was ineligible for unemployment benefits due to misconduct under subdivision (a)(1) of this section because when confronted by a manager, he lied about the existence of a romantic relationship with a coworker, which was in violation of company policy, and it was his dishonesty that resulted in his termination. *Crisp v. Dir., Dep't of Workforce Servs.*, 2013 Ark. App. 219 (2013).

Board of Review did not err under subdivision (a)(1) of this section in denying an employee unemployment compensation after she was discharged because a witness testified that she had conducted an inquiry into the employer's operations and the actions and omissions by the employee. *Smith v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 360 (2013).

Board of Review erred in holding that an employee was not entitled to unemployment compensation under subsection (a) of this section on the ground that he did not check to make sure a trailer door was properly secured before leaving a dock because his conduct did not demonstrate the necessary level of intent to support the conclusion that he engaged in misconduct. *Rodriguez v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 361 (2013).

Board of Review did not err under subdivision (a)(1) of this section in denying an employee's claim for unemployment benefits on the ground that she was terminated from her position due to misconduct because she had a duty to report the abuse of a child by a staff member and did not do so despite being given multiple opportunities by the employer. *Parham v. Director,*

Dep't of Workforce Servs., 2013 Ark. App. 362 (2013).

Claimant was not entitled to unemployment benefits, because she was discharged for misconduct, when the claimant made a conscious decision to not perform the insurance notifications despite the cost to her employer for not doing so and despite having been asked to handle the task immediately on more than one occasion. *Ivy v. Director*, 2013 Ark. App. 381 (2013).

Employee who went out of town to visit her family when no schedule had been posted yet for the coming week did not commit employment misconduct when she called two days later to inform her employer that she would not be able to report to work; therefore, the denial of her claim for unemployment benefits was in error. *Millsbaugh v. Director*, Dep't of Workforce Servs., 2013 Ark. App. 450 (2013).

Finding that the employee was disqualified from receiving unemployment benefits was appropriate because substantial evidence supported the determination that he was terminated for misconduct as a result of violating his employer's sexual-harassment policy. Although the employee contended that there were inconsistencies in the testimony, the credibility of witnesses and the drawing of inferences from the testimony was not for the appellate court to determine. *Ramirez v. Director*, 2013 Ark. App. 453 (2013).

The recurrence of unsatisfactory conduct can reach such a degree as to manifest the necessary intent to establish employment misconduct for unemployment-insurance purposes. It is not required that the unsatisfactory conduct be of the same type. *Williams v. Director*, Dep't of Workforce Servs., 2013 Ark. App. 531 (2013).

Applicant was improperly denied unemployment benefits because she did not commit misconduct where there was no intent shown; the applicant's failure to secure a certificate testing date was not a willful or wanton disregard of the employer's interest where the employer failed to complete paperwork. *Garrett v. Director*, Dep't of Workforce Servs., 2014 Ark. 50 (2014).

Substantial evidence did not support the Board of Review's decision that the employee engaged in misconduct, and therefore she was entitled to unemployment compensation, because she was ter-

minated for failing a random drug test, the result of inadvertently taking a prescription medication that had been prescribed for her daughter, rather than her own stronger prescription medication. *Davis v. Director*, Dep't of Workforce Servs., 2014 Ark. App. 17 (2014).

Unemployment benefits were properly denied to a claimant because there was substantial evidence that he was discharged due to misconduct based on his acts of sexual harassment; on review, the appellate court did not pass on the credibility of the witnesses. The only evidence to support the claimant was his own testimony; however, two employees testified detailing four separate incidents of sexual harassment by the claimant. *Moody v. Dir.*, 2014 Ark. App. 137, 432 S.W.3d 157 (2014).

Record showed that claimant was laid off because his position was eliminated, and nothing suggested intentional conduct or a pattern of disregard, and thus the conclusion that the employer discharged claimant for misconduct could not be sustained, and the case was remanded for an award of unemployment compensation. *Roberts v. Director*, Dep't of Workforce Servs., 2014 Ark. App. 201 (2014).

Board of Review erred in denying an employee's application for unemployment benefits because the facts were not sufficient to support a finding of misconduct where the employee's asking another employee about his bonus amounted to a good-faith error in judgment or an isolated instance of ordinary negligence and did not establish wrongful intent or evil design, and while such conduct might be a sufficient basis for the discharge, it was not a sufficient basis for the denial of unemployment compensation. *Arwood v. Director*, Dep't of Workforce Servs., 2015 Ark. App. 285, 461 S.W.3d 364 (2015).

Board of Review did not err in denying the claimant unemployment benefits because she was discharged from last work for misconduct in connection with the work as her absences were in disregard of the employer's interests and thus amounted to misconduct in connection with the work because she accumulated twenty-six and a half points for absences - sixteen and a half points more than was normally allowed under the employer's attendance policy; and she missed three consecutive days, just prior to her termi-

nation, with no call in or explanation. *Hernandez v. Director, Dep't of Workforce Servs.*, 2015 Ark. App. 290, 461 S.W.3d 708 (2015).

Because the employer had reserved sole and absolute discretion to determine the appropriate disciplinary action in each case, and the claimant incurred three separate infractions of work rules in a short period of time, the Board of Review's finding that the claimant was discharged from her last work for misconduct was supported by substantial evidence. *Alvarenga v. Director, Dep't of Workforce Servs.*, 2015 Ark. App. 307 (2015).

Board of Review did not err in denying unemployment benefits to the claimant based on misconduct because there was substantial evidence to support the Board's finding that the points accumulated by the claimant for violating the employer's work rules were correctly calculated and uniformly applied; claimant had received a group warning about taking more time than was authorized for meals or break periods before receiving the second written warning and being discharged on the third violation. *Alvarenga v. Director, Dep't of Workforce Servs.*, 2015 Ark. App. 307 (2015).

Worker's testimony clearly conflicted with the statements of his employer, and the Board of Review resolved these conflicts in favor of the employer and there was substantial evidence to support the Board's finding that the worker was discharged from his last work for misconduct connected with the work due to his absenteeism. *Holmes v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 337, 463 S.W.3d 744 (2015).

Substantial evidence supported the Board of Review's findings of misconduct in connection with the work where the employee deliberately violated the employer's rules and willfully disregarded the employer's interest by repeating threatening statements concerning a co-worker to the human resources director and other coworkers after being informed that he would be terminated if he did so. *Clark v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 491, 469 S.W.3d 808 (2015).

—In General.

Employee's claim for unemployment benefits was properly denied because he

was dismissed for misconduct in connection with his work for refusing to comply with his supervisor's instructions, failed to preserve his arguments on appeal, knew what evidence was being presented (it was contained in the employer's general discharge statement), and never requested a remand in order to subpoena his supervisor or the personnel director. *Grant v. Director, Dep't of Workforce Servs.*, 2014 Ark. App. 249 (2014).

—Absenteeism.

Court reversed a decision of the Board of Review denying appellant unemployment benefits because substantial evidence did not support the Board's finding that appellant's absences constituted a willful disregard of the employer's best interests. The employer allowed its employees to accumulate up to nine points without the risk of losing their jobs, and appellant was discharged when a vacation day was "inadvertently" counted against him, resulting in an accumulation of nine points in a year. The evidence showed that appellant's actual absentee/tardiness points fell within the range allowed by the employer. *Preston v. Director*, 2013 Ark. App. 191 (2013).

Board of Review erred in denying an employee's claim for unemployment benefits under subsection (a) of this section because she did not engage in misconduct where, although she did not provide a doctor's excuse for her 4-day absence, her illness was beyond her control, she told a ranking supervisor that she was leaving due to illness, and kept her employer informed about the basic course of her illness. *Jones v. Dir., Dep't of Workforce Servs.*, 2014 Ark. App. 426, 439 S.W.3d 85 (2014).

Board of Review's decision that the employee violated this section was unreasonable where there was no evidence that the employee intentionally violated the rules so as to manifest wrongful intent or evil design by being absent for three days, as there was no evidence that the employee was told by her treating physician that she had been released to return to work. *Johnson v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 389, 465 S.W.3d 878 (2015).

Regardless of the worker's argument that her absences were due to illness and were not intentional, she was discharged

for violating her employer's attendance policy, and there was substantial evidence to support the decision that she was discharged for misconduct connected with work; the employee handbook provided that excessive absenteeism was unacceptable and that absences without approval might subject an employee to disciplinary action, plus the worker was verbally warned several times, and she was issued a written warning. *Higgins v. Dir.*, Dep't of Workforce Servs., 2016 Ark. App. 449, 503 S.W.3d 833 (2016).

Board of Review properly affirmed the denial of an employee's claim for unemployment benefits because the employee, who had worked for the employer for over 35 years, was aware of the employer's absence policy, the employee had received prior disciplinary warnings for attendance, the employee's intent was irrelevant where she was discharged for absenteeism based on the terms of a bona fide written attendance policy, regardless of whether the policy was a fault or no-fault policy, as required by statute, and the employee did not make a request to Human Resources to use vacation leave or for leave under the Family and Medical Leave Act. *Burch v. Bassett*, 2016 Ark. App. 456, 503 S.W.3d 852 (2016).

Board of Review erred in affirming and adopting the Appeal Tribunal's denial of an employee's application for unemployment benefits because the employee's single incident of purported misconduct did not rise to the level of willful disregard of her employer's interest and did not indicate the requisite intent; the employee had been arrested at midnight the previous night and was incarcerated, and she testified that there was no way to call her employer ahead of time to let them know that she would be absent where she was allowed only one phone call, which she used to call her mother in order to make arrangements to get out of jail and check on her children. *Whitmer v. Dir.*, Dep't of Workforce Servs., 2017 Ark. App. 367, 525 S.W.3d 45 (2017).

Board of Review's decision that a teacher's aide was discharged for violating the school district's attendance policy was reversed; although the district had a written policy on absenteeism, the policy provided for loss of pay, not discharge for excessive absenteeism. There was neither a showing that the aide's discharge was pursuant

to a bona fide written attendance policy under subdivision (a)(2) of this section nor a finding that her conduct was willful under subdivision (a)(3). *Hopkins v. Dir.*, Dep't of Workforce Servs., 2019 Ark. App. 84, 571 S.W.3d 524 (2019).

There was not substantial evidence that an unemployment claimant's actions after he injured his back constituted misconduct because he did not consider his back-pain situation to involve a leave of absence, he contacted his immediate supervisor and informed the supervisor of the situation in accordance with the personnel policy, and he never heard back from anyone until his spouse subsequently informed him that he had been replaced. *Blanton v. Dir.*, Dep't of Workforce Servs., 2019 Ark. App. 205, 575 S.W.3d 186 (2019).

—Evidence.

Claimant knew her government-issued credit card was not to be used for personal expenses but asserted she did so after her supervisor indicated that she could use it for relocation, which the supervisor denied; it was within the board's purview to determine witness credibility, and substantial evidence supported the board's decision to deny benefits for misconduct. *Theophile v. Dir.*, Dep't of Workforce Servs., 2014 Ark. App. 462, 441 S.W.3d 66 (2014).

—Misconduct Found.

Board of Review properly affirmed the Appeal Tribunal's denial of a professor's request for unemployment benefits based on its finding that she was discharged for misconduct in connection with her work because, inter alia, she had received multiple reprimands, was the subject of multiple student complaints, acted unprofessionally by using class time to ask students to write letters to support her, failed to show up for class, failed to keep office hours, impermissibly changed the format of her course from on-campus to online, performed inadequately in an observed class, and repeatedly failed to either come to work or provide necessary documentation as to her medical situation that prevented her from working. *Brown v. Dir.*, Dep't of Workforce Servs., 2017 Ark. App. 604, 534 S.W.3d 754 (2017).

Board of Review properly denied a former employee unemployment compensa-

tion benefits because the former employer presented evidence that the employee divulged confidential information despite having been instructed not to do so and that she had refused to prepare a plan of correction despite having been told to do so; the employer presented evidence that insubordination was specifically prohibited in the employer's written policy. *McCuller-Silverman v. Dir.*, Dep't of Workforce Servs., 2017 Ark. App. 606, 534 S.W.3d 748 (2017).

Board of Review did not err in denying the claimant unemployment benefits as substantial evidence supported the board's finding that the employer had proven the claimant committed an act of misconduct; although the claimant was upset after the assistant manager publicly berated him, the claimant failed to seek permission before leaving his job post for the day and the claimant intentionally violated the employer's rules and disregarded its interests. *Lovins v. Dir.*, Dep't of Workforce Servs., 2020 Ark. App. 472 (2020).

—Not Shown.

Board of Review erred in denying an employee unemployment benefits based on misconduct in connection with the work; the employee's policy violation was an isolated instance of negligence where the required proof of intent was lacking. *Hubbard v. Dir.*, Dep't of Workforce Servs., 2015 Ark. App. 235, 460 S.W.3d 294 (2015).

Board of Review erred in denying unemployment benefits to an employee because the evidence did not support the Board's finding of misconduct where the employer's statement indicated that he discharged the employee for the rude and offensive manner in which she argued with him in a telephone conversation and there was no evidence of an intentional or deliberate violation, a willful or wanton disregard, or carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Jones v. Dir.*, Dep't of Workforce Servs., 2015 Ark. App. 479, 470 S.W.3d 277 (2015).

Board of Review erred in finding that an employee was disqualified from collecting unemployment benefits because his negligent action in damaging a truck owned by the employer did not rise to such a level as to constitute misconduct, but was instead

the result of ordinary negligence or a good-faith error in judgment. While the employer might have acted reasonably in deciding to terminate the employee, there was no substantial evidence to support the Board's determination that the employee's action amounted to an intentional disregard of his employer's interest or manifested wrongful intent or evil design. *Quesenberry v. Dir.*, Dep't of Workforce Servs., 2015 Ark. App. 699, 477 S.W.3d 573 (2015).

Employee acted at the direction of her supervisor in making a change to a document to correct a clerical error, and the employer's position that the employee should have consulted the director did not demonstrate that the employee committed an intentional violation of employee standards, but rather a good faith error in judgment; there was no allegation of any personal gain by the employee, and there was no evidence of any intent to deceive, and thus there was no substantial evidence of dishonesty, and she was not disqualified from receiving unemployment benefits. *Cook v. Dir.*, Dep't of Workforce Servs., 2016 Ark. App. 12, 480 S.W.3d 194 (2016).

Substantial evidence did not support the Board of Review's conclusion that a merchant account representative, who was discharged for poor sales performance, was disqualified from receiving unemployment benefits based on misconduct connected to work. The claimant testified that he was transferred to a new territory, he spent limited time there because he was traveling to and from his home, and the cost of travel proved difficult to offset; although the claimant had not reached his sales goals, the record did not support the finding that he manifested an intent to violate his employer's rules or disregard its interests. *Zenaro v. Dir.*, Dep't of Workforce Servs., 2017 Ark. App. 290, 521 S.W.3d 164 (2017).

Substantial evidence did not support the Board of Review's finding of misconduct and ineligibility for unemployment benefits when a family service specialist employed by the Department of Human Services had failed to redact the names and Social Security numbers of clients from documentation she submitted to defend herself in a grievance proceeding over her handling of the clients' case. The former employee testified that she knew of

no policy prohibiting her use of work documentation to support her own defense regarding a work-related reprimand, and she had never before been disciplined for any breach of confidentiality. *Taylor v. Dir., Dep't of Workforce Servs.*, 2018 Ark. App. 442, 558 S.W.3d 420 (2018).

Substantial evidence did not support the Board of Review's finding of misconduct concerning a claimant for unemployment benefits because the errors in the claimant's work performance did not constitute intentional failure to perform the claimant's job as the claimant made two completely different kinds of work errors that occurred almost a year apart. No reasonable person could have concluded that these workplace mistakes manifested deliberate disregard of the employer's interests. *Keith v. Dir., Dep't of Workforce Servs.*, 2018 Ark. App. 541, 564 S.W.3d 296 (2018).

Board of Review erred in denying an employee's claim for unemployment benefits based on misconduct in connection with the work because the employee's conduct was not of such a degree or recurrence as to manifest culpability, wrongful intent, evil design, or an intentional or substantial disregard of her employer's interests or her duties and obligations; the evidence showed that the employee notified the employer that she could not work due to her illness and hospitalization, she remained hospitalized for over two months, was placed on a ventilator, and underwent a tracheotomy, the employer sent the employee the notification letters during her hospitalization, and the employee contacted the employer shortly after she had been discharged. *Dillinger v. Dir., Dep't of Workforce Servs.*, 2020 Ark. App. 138, 596 S.W.3d 62 (2020).

—Quality of Work Product.

Court reversed the Board of Review's decision to deny appellant unemployment benefits because substantial evidence did not support the Board's conclusion that appellant was fired for misconduct under subsection (a) of this section as the record showed that appellant was discharged for purely economic reasons. Failing to be a productive salesman was not misconduct. An element of intent was required, and the Board erred in concluding that appellant had intentionally or willfully underperformed. *Warren v. Director*, 2013 Ark. App. 178 (2013).

—Repeated Acts.

Board of Review did not err in concluding that a former employee was disqualified from unemployment benefits based on misconduct because the employee's repeated errors, which were made after multiple warnings were issued regarding such errors, constituted "repeated acts of commission, omission or negligence" under this section. *McAteer v. Dir., Dep't of Workforce Servs.*, 2016 Ark. App. 52, 481 S.W.3d 776 (2016).

—Safety Rules.

Board of Review's decision denying a claimant unemployment benefits was affirmed where he clearly violated the employer's safety rules by entering a gaseous atmosphere without back up and without permission from his supervisor, and thus the decision that he was discharged for misconduct was supported by substantial evidence. *Wilson v. Dir., Dep't of Workforce Servs.*, 2017 Ark. App. 171, 517 S.W.3d 427 (2017).

Substantial evidence existed to support the Board of Review's finding that an employee willfully violated the rules or customs of the employer pertaining to safety where the employer conducted an extensive investigation, the employee admitted he was aware of and understood the company's "lock out/tag out" safety policy, and the evidence showed that he did not follow the safety procedures before putting his arm in the stacker-stick-layer machine. Thus, the employee's ineligibility for unemployment benefits under subdivision (b)(1) of this section was upheld. *Thomas v. Dir., Dep't of Workforce Servs.*, 2019 Ark. App. 468, 587 S.W.3d 612 (2019).

—Social Media.

While substantial evidence supported a finding of harm to the employer's interests when all things, including the parties' credibility, were considered, substantial evidence did not support a finding that the applicant's conduct in posting a Facebook status arguably critical of her employer violated any policy or was made with the intent or knowledge that the employer's interests would suffer. While the at-home post by the applicant expressed exasperation in general terms, the exasperation was not derogatory in nature or directed at any individual or entity; thus, the

Board's decision denying unemployment benefits on the basis of misconduct was reversed. *Martinez v. Dir.*, Dep't of Workforce Servs., 2015 Ark. App. 717, 478 S.W.3d 276 (2015).

Resignation Under Pressure.

Employer determined that there were additional violations that warranted more discipline, and the claimant was allowed to resign in lieu of being discharged, and a resignation induced under pressure was not considered voluntary and was treated as a discharge for purposes of unemployment insurance. *Theophile v. Dir.*, Dep't of Workforce Servs., 2014 Ark. App. 462, 441 S.W.3d 66 (2014).

Substantial Evidence.

Board of Review's denial of an employee's application for unemployment benefits was supported by substantial evidence because the employee's intentional violations of the employer's safety rules constituted misconduct within the meaning of subsection (b) of this section for which the employee could be discharged. *Hoy v. Williams*, 2012 Ark. App. 465 (2012).

Review board could have reasonably reached its decision that the employee was discharged for reasons other than misconduct, and thus the decision was supported by substantial evidence, given that (1) on the days the employee became emotional at work, she had been responding to the fact that her car had been broken into or mourning the anniversary of her husband's death, (2) the board could have found that the employee's actions, including using her cell phone, was not an intentional disregard of the employer's best interest, (3) it was a fair inference that the employer did not present much specific information about how the employee's behavior had an effect on the work place, and (4) whether or not the employee's behavior adversely affected the work place, her behavior did not amount to misconduct that was connected with the work. *King v. Director*, 2013 Ark. App. 97 (2013).

Review board affirmed the appeal tribunal decision that found the employee was discharged for reasons other than misconduct under subdivision (a)(1) of this section, but the employer asked the court to

apply the wrong standard of review on appeal; the court did not determine if a contrary finding by the board would have been supported by substantial evidence, but whether substantial evidence supported the findings that the board made, and the court would affirm if the board could reasonably have reached the decision it made, even if there was evidence upon which a different decision could have been reached. *King v. Director*, 2013 Ark. App. 97 (2013).

Substantial evidence supported the finding that the claimant's acts were against her employer's best interests and that she was discharged for misconduct in connection with the work, because the claimant failed to follow routing procedures, and failed to review and edit a document before it was submitted to the director. *Weinstein v. Dir.*, 2013 Ark. App. 374, 428 S.W.3d 560 (2013).

In an unemployment insurance case, substantial evidence supported the decision of the Board of Review that an employee was discharged for employment misconduct based on repeated acts of poor performance despite progressive warnings and his failure to comply with an improvement plan. *Williams v. Director*, Dep't of Workforce Servs., 2013 Ark. App. 531 (2013).

In the context of a claim for unemployment benefits, the Board of Review's finding that an attorney was terminated for reasons other than misconduct was upheld where substantial evidence supported the finding that the ending of the working relationship resulted from genuine disputes between the law firm and the attorney over monies owed. *Law Offices of Craig L. Cook v. Dir.*, Dep't of Workforce Serv., 2013 Ark. App. 741, 431 S.W.3d 337 (2013).

Substantial evidence did not support the Board of Review's determination that a high school counselor's negligence was of such degree or recurrence as to manifest wrongful intent or evil design where his apparent error in student records as to proper math credits and his failure to stay current on state graduation requirements did not amount to misconduct sufficient to deny him unemployment benefits. *Sims v. Dir.*, Dep't of Workforce Servs., 2014 Ark. App. 512, 443 S.W.3d 570 (2014).

11-10-515. Disqualification — Failure or refusal to apply for or accept suitable work.

(a)(1)(A) If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits if he or she has failed without good cause:

(i) To apply for available suitable work when so directed by a Division of Workforce Services office; or

(ii) To accept available suitable work when offered.

(B) The disqualification under subdivision (a)(1)(A) of this section shall continue until, subsequent to the effective date of the disqualification, he or she has had at least thirty (30) days of employment covered by an unemployment compensation law of this state, another state, or the United States.

(2)(A) An individual who applies for benefits is disqualified for benefits if he or she was rejected for offered employment as the direct result of a failure:

(i) To appear for a United States Department of Transportation-qualified drug screen after having received a bona fide job offer of suitable work subject to passage of the drug screen; or

(ii) To pass a United States Department of Transportation-qualified drug screen by testing positive for an illegal drug after having received a bona fide job offer of suitable work.

(B) The disqualification under subdivision (a)(2)(A) of this section shall continue until subsequent to the date of the disqualification, the claimant has been paid wages in two (2) quarters for insured work totaling not less than thirty-five (35) times his or her weekly benefit amount.

(b)(1) No individual shall be disqualified from the receipt of benefits with respect to any week in which he or she is in training with the approval of the director by reason of the application of provisions in subsection (a) of this section.

(2) For the purpose of this subsection, the approval of the director shall be based on the following considerations:

(A) The claimant's skills must be either obsolete or the demands for his or her skills in his or her labor market must be such as to make employment opportunities for him or her in that labor market minimal and not likely to improve;

(B) The claimant must possess aptitudes or skills which can be usefully supplemented within a short time by retraining;

(C) The training must be for an occupation for which there is a substantial and recurring demand; and

(D) The claimant must produce evidence of continued attendance and satisfactory progress.

(c)(1) In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving his or her work under § 11-10-513, there shall be considered, among other factors and in addition to those enumerated in

subsection (d) of this section, the degree of risk involved to his or her health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, the length of his or her unemployment, his or her prospects for obtaining work in his or her customary occupation, the distance of available work from his or her residence, and prospects for obtaining local work.

(2) Work offered to an individual by a base-period or last employer at earnings equal to or greater than the individual earned from the base-period or last employer shall be deemed to be suitable work unless any of the factors above are applicable and it would be contrary to good conscience to deem the work suitable.

(d) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

History. Acts 1941, No. 391, § 5; 1943, No. 138, § 30; 1949, No. 155, § 5; 1955, No. 395, § 13; 1971, No. 35, § 9; A.S.A. 1947, § 81-1106; Acts 1991, No. 100, § 28; 1997, No. 234, § 13; 2001, No. 755, § 1; 2007, No. 454, § 2; 2011, No. 861, § 5; 2015, No. 690, § 2; 2019, No. 453, § 6; 2019, No. 910, § 243.

Amendments. The 2019 amendment by No. 453, in (a)(1)(B), substituted “the effective date of the disqualification” for “filing a claim”, and deleted “and shall begin with the week in which the failure

to apply for or accept available suitable work occurred” from the end.

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of (a)(1)(A); and substituted “Division of Workforce Services” for “Department of Workforce Services” in (a)(1)(A)(i).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

ANALYSIS

In General.

Good Cause Not Shown.

Remand.

In General.

Where a temporary employee voluntarily quit her employment and was disqualified from unemployment benefits, the Board of Review incorrectly assessed the unemployment disqualification for violations of subdivision (a)(1)(B) of this

section as enacted in July 2011 rather than the statute in effect on the refusal dates. The employee should have been disqualified from benefits for the eight-week period under the previous version of the statute. *Nelson v. Director, Dep’t of Workforce Servs.*, 2013 Ark. App. 533 (2013).

Good Cause Not Shown.

Lack of transportation is not a reason connected with the work to establish good cause for failing to accept suitable work.

Nelson v. Director, Dep't of Workforce Servs., 2013 Ark. App. 533 (2013).

Remand.

Board of Review's determination that the claimant was disqualified from benefits because she failed without good cause to accept suitable work when of-

fered was remanded because the Board did not set forth a factual basis for concluding that the claimant's training was without the approval of the director. Fraysher v. Director, Dep't of Workforce Servs., 2013 Ark. App. 603 (2013).

11-10-516. Disqualification — Refusal to report after layoff.

(a)(1) If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits if while on a layoff of ten (10) weeks or less, he or she refuses to report for work within one (1) week after notice of recall to the same job or to a suitable job similar to the one from which he or she was laid off, or if while unemployed, he or she voluntarily removes his or her name from a recall list set forth in a written contract of a base-period employer, provided that the employer files a written notice of the refusal of recall or removal from a recall list with the Division of Workforce Services within seven (7) days of the occurrence.

(2) The disqualification shall begin on the date of receipt of the written notice of refusal of recall or removal from the recall list by the division and shall continue until, subsequent to filing his or her claim, he or she has had at least thirty (30) days of employment covered by an unemployment compensation law of this state, or another state, or of the United States.

(b) No individual shall be disqualified under this section if he or she refuses to report for recall to the job or removes his or her name from a recall list as described in subsection (a) of this section because he or she is employed on a full-time basis, has a written offer of a job, or because of circumstances of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification.

History. Acts 1941, No. 391, § 5; 1955, No. 395, § 14; 1983, No. 482, § 18; A.S.A. 1947, § 81-1106; Acts 1987, No. 753, § 15; 2005, No. 902, § 3; 2019, No. 910, § 244.

Amendments. The 2019 amendment

substituted "Division of Workforce Services" for "Department of Workforce Services" twice in (a)(1); and substituted "division" for "department" in (a)(2).

11-10-517. Disqualification — Receipt of other remunerations.

If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits for any week with respect to which he or she receives or has received remuneration in the form of:

(1) SEPARATION PAYMENTS.

(A) For initial claims made on and after January 1, 2018:

(i)(a) Separation payments are disqualifying for the number of weeks following the date of the separation that equals the number of weeks of wages received in the separation payment.

(b) An armed services severance payment paid to a former member of the United States Armed Forces shall not be disqualifying under the terms of this section.

(c) Remuneration paid as back pay in settlement of a claim or grievance and supplemental unemployment benefits shall not be disqualifying; and

(ii)(a) The employer shall specify the total amount of separation pay and the number of weeks of wages represented by the separation pay.

(b) If the employer does not specify the number of weeks under subdivision (1)(A)(ii)(a) of this section, the Division of Workforce Services shall allocate the separation pay using the claimant's average weekly wage.

(B) For the purposes of subdivision (1)(A) of this section, a partial week of separation pay shall be treated as a payment for a full week of separation;

(2) Unemployment benefits under an unemployment compensation law of another state or of the United States;

(3)(A) Any governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment received with respect to the week and that is based on the previous work of the claimant if payment is received under a plan maintained or contributed to by a base-period employer.

(B)(i) However, the amount of unemployment benefits payable to the individual for the week shall be reduced, but not below zero (\$0.00), by an amount equal to the amount of the pension, retirement or retired pay, annuity, or other payment that is reasonably attributable to the week.

(ii) Any weekly benefit amount that is reduced because of the receipt of remuneration as defined under this section and that is not an even multiple of one dollar (\$1.00) shall be rounded to the next lower multiple of one dollar (\$1.00).

(C) If payments referred to in this subdivision (3) are being received by any individual under the federal Social Security Act, the director shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4)(A) Training and retraining allowance provided for by appropriation of the United States Congress.

(B) However, this subdivision (4) does not apply if the claimant has met the benefit eligibility conditions set out in §§ 11-10-507 — 11-10-511 and other sections of this chapter;

(5) VACATION PAYMENTS.

(A) Vacation payments shall be treated as earnings in accordance with § 11-10-503 with respect to the week or weeks in which the vacation period occurred.

(B) For the purpose of this subdivision (5), the employer shall promptly report the week or weeks involved in the vacation period as well as the corresponding amount of vacation pay with respect to such week or weeks.

(C) Any vacation payments received due to a permanent separation from employment shall not be disqualifying nor deductible under this section;

(6) Bonus payments that shall be treated as earnings in accordance with § 11-10-503 only for the week in which the payment is received;

(7) SICK PAYMENTS.

(A) Sick payments shall be treated as earnings in accordance with § 11-10-503 with respect to the week or weeks in which the sick-pay period occurred.

(B) For the purpose of this subdivision (7), the employer shall promptly report the week or weeks involved in the sick-pay period as well as the corresponding amount of sick payments with respect to the week or weeks.

(C) However, any sick payments received due to a permanent separation from employment shall not be disqualifying nor deductible under this section; and

(8) HOLIDAY PAYMENTS.

(A) Holiday payments shall be treated as earnings in accordance with § 11-10-503 for the week or weeks in which the holiday occurred.

(B) For the purpose of this subdivision (8), the employer shall promptly report the week or weeks involved in the holiday pay period and the corresponding amount of holiday payments for that holiday pay period.

History. Acts 1941, No. 391, §§ 3, 5; 1949, No. 155, § 5; 1953, No. 162, § 3; 1955, No. 395, § 16; 1963, No. 93, §§ 4, 6; 1971, No. 35, §§ 7, 9; 1972 (1st Ex. Sess.), No. 65, § 1; 1975, No. 154, § 1; 1975, No. 609, § 2; 1975, No. 627, § 1; 1975 (Extended Sess., 1976), No. 1083, §§ 6, 7; 1977, No. 366, § 7; 1977, No. 376, § 11; 1979, No. 492, § 8; 1979, No. 922, § 8; 1981 (1st Ex. Sess.), No. 37, § 8; 1983, No. 482, §§ 9, 18-20; A.S.A. 1947, §§ 81-1104, 81-1106; reen. Acts 1987, No. 672, §§ 5, 6; Acts 1991, No. 48, § 4; 1993, No. 6, § 8; 2001, No. 1367, § 6; 2003, No. 1223, § 6; 2005, No. 902, § 4; 2007, No. 490, § 6; 2017, No. 734, § 4; 2019, No. 453, § 7; 2019, No. 910, §§ 245, 246.

A.C.R.C. Notes. Acts 2017, No. 734, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The State of Arkansas needs to take steps to ensure the financial stability of the Unemployment Compensation Fund;

"(2) Arkansas's unemployment costs to employers are higher than some surrounding states;

"(3) Arkansas employers have been paying increased unemployment taxes since 2009 as a result of a recession which dramatically increased unemployment; and

"(4) Making the changes set forth in this bill will increase the stability of the Unemployment Compensation Fund and increase the state's employers' ability to compete in attracting businesses."

Amendments. The 2017 amendment redesignated former (1)(A)-(C) as (1)(A); and added (1)(B).

The 2019 amendment by No. 453 deleted former (1)(A) and redesignated former (1)(B) as (1)(A); added (1)(B); and updated an internal reference in (1)(A)(ii)(b).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in the introductory language of the section; and substituted "Division of Workforce Services" for "Department of Workforce Services" in (1)(B)(ii)(b) [now (1)(A)(ii)(b)].

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

Dismissal Payments.

Board of Review erred in finding that the former employee was disqualified from receiving benefits under subdivision (1) of this section from April 12, 2020, through July 4, 2020, where a severance agreement stated that his last date of employment was March 1, 2020, and specified that the employer was paying

the employee 12 weeks of severance pay, the Board did not explain why it used July 4, 2020, as the end of the disqualification period, and by using that date, it effectively disqualified the employee for 18 weeks instead of 12 weeks. *Martin v. Dir., Dep't of Workforce Servs.*, 2021 Ark. App. 66 (2021).

11-10-519. Disqualification — Penalty for false statement or misrepresentation.

(a) If so found by the Director of the Division of Workforce Services, an individual shall be disqualified for benefits:

(1)(A) If he or she willfully makes a false statement or misrepresentation of a material fact or willfully fails to disclose a material fact in filing an initial claim or a claim renewal, he or she shall be disqualified from the effective date of the disqualification until he or she has twenty (20) weeks of employment in each of which he or she has earned wages equal to at least his or her weekly benefit amount.

(B)(i) In addition to the twenty-week disqualification in subdivision (a)(1)(A) of this section, any weekly benefits payable subsequent to the date of delivery or mailing of the determination shall be terminated.

(ii) The termination shall apply only to benefits payable within the benefit year of the claim with respect to which the claimant willfully made a false statement or misrepresentation;

(2)(A) For any continued week claimed with respect to which the employee has willfully made a false statement or misrepresentation of a material fact or willfully fails to disclose a material fact in obtaining or attempting to obtain any benefits, and for an additional thirteen (13) weeks of unemployment, as defined in § 11-10-512, and which shall commence with Sunday of the first week with respect to which a claim is filed commencing with the week of delivery or mailing of the determination of disqualification under this section.

(B)(i) In addition to the thirteen (13) weeks of disqualification, a disqualification of three (3) weeks shall be imposed for each week of failure or falsification.

(ii)(a) Any weekly benefits payable subsequent to the date of delivery or mailing of the determination shall be terminated.

(b) The termination shall apply only to benefits payable within the benefit year of the claim with respect to which the claimant willfully made a false statement or misrepresentation; and

(3)(A) The disqualification shall not be applied after five (5) years have elapsed from the date of delivery or mailing of the determination of disqualification under this section.

(B)(i) A person who is disqualified under this section shall be liable for repayment of any benefits determined to have been collected

fraudulently, as well as any other penalties, interest, and costs assessed as a result of the fraudulent activity.

(ii) Until the liabilities have been repaid, the person shall forfeit any right to receive benefits under this chapter.

(b) Upon request of the Legislative Council, the Division of Workforce Services shall provide reports regarding unemployment insurance claim fraud and its efforts to prevent the fraud.

History. Acts 1941, No. 391, § 5; 1949, No. 155, § 5; 1955, No. 395, § 19; 1963, No. 93, § 6; 1971, No. 35, § 9; 1983, No. 482, § 21; A.S.A. 1947, § 81-1106; Acts 2001, No. 1367, § 7; 2003, No. 1223, § 7; 2013, No. 1242, § 1; 2019, No. 453, § 8; 2019, No. 910, §§ 247, 248.

Amendments. The 2019 amendment by No. 453 redesignated (a)(1) as (a)(1)(A); in (a)(1)(A), substituted “effective date of the disqualification” for “date of filing the claim” and substituted “twenty (20) weeks” for “ten (10) weeks”; added (a)(1)(B); redesignated (a)(3) as (a)(3)(A); in (a)(3)(A), substituted “five (5) years” for

“two and one-half (2½) years”, and deleted “but all overpayments established by the determination of disqualification shall be collected as otherwise provided by this chapter” from the end; and added (a)(3)(B).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of (a); and substituted “Division of Workforce Services” for “Department of Workforce Services” in (b).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

Evidence.

Because the Board of Review found that the worker was aware that he had not been laid off due to a lack of work and that he misrepresented the circumstances of his separation when filing his initial claim for benefits, there was substantial evidence to support the finding that he was disqualified. *Holmes v. Dir., Dep’t of Workforce Servs.*, 2015 Ark. App. 337, 463 S.W.3d 744 (2015).

Board of Review’s decision disqualifying a former employee from receiving unemployment benefits was supported by substantial evidence where a wage audit revealed that she had earned \$9.60 during one week in the claim period, she reported no earnings for that week, she was aware that she worked for a short period of time that week and was given information about reporting those wages, and there

was no evidence that she was unaware of the requirement to report her earnings. *Rivera v. Dir., Dep’t of Workforce Servs.*, 2018 Ark. App. 436, 560 S.W.3d 797 (2018).

Unemployment compensation claimant’s disqualification was reversed as substantial evidence did not support the finding that his failure to report earnings information was willful; the employer reported earnings of \$38.78 for two weeks that were itemized as “top of scale pay” and that were taken up by deductions and taxes such that claimant received nothing. He did not go to work, he did not receive a paycheck, and he did not get money directly deposited into a bank account, and he could not be found to have willfully failed to disclose material facts before he knew those facts himself. *Klak v. Dir., Dep’t of Workforce Servs.*, 2020 Ark. App. 117, 597 S.W.3d 86 (2020).

11-10-520. Claims — Posting of information by employer.

(a) Each employer shall post and maintain, in places readily accessible to individuals in the employer’s employ, printed statements concerning benefit rights, claims for benefits, and such other matters

relating to the administration of this chapter as the Director of the Division of Workforce Services may by rule prescribe.

(b) Each employer shall supply to those individuals copies of such printed statements or other materials relating to claims for benefits when, and as, the director may by rule prescribe.

(c) The printed statements and other materials shall be supplied by the director to each employer without cost to the employer.

History. Acts 1941, No. 391, § 6; A.S.A. 1947, § 81-1107; Acts 2019, No. 315, § 821; 2019, No. 910, § 249.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a) and (b).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-521. Claims — Filing — Notice to last employer.

(a) Claims for benefits shall be made in accordance with rules the Director of the Division of Workforce Services prescribes.

(b)(1)(A) A notice of the filing of an initial claim shall be immediately mailed or posted online under subsection (c) of this section, or both, to the employing unit known to the claimant as his or her last employer.

(B) An employer notified under subdivision (b)(1)(A) of this section may choose to receive and respond to notice under this section through the mail or through the online program under subsection (c) of this section, or both.

(2)(A) If a last employer fails to respond within ten (10) calendar days to a notice under this section, the last employer shall be deemed to have waived the right to respond.

(B) If a last employer’s right to respond has been deemed waived under subdivision (b)(2)(A) of this section, the director may accept the statement given by the claimant as his or her reason for separation from the last employer and may base his or her determination on the statement given by the claimant.

(c) On or before January 1, 2012, the director shall make available on the website of the Division of Workforce Services a program that will allow employers the option to receive and respond to notice under this section.

History. Acts 1941, No. 391, § 6; 1953, No. 162, § 4; A.S.A. 1947, § 81-1107; Acts 2011, No. 1229, § 2; 2019, No. 315, § 822; 2019, No. 910, §§ 250, 251.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a); and substituted “Division of Workforce Services” for “Department of Workforce Services” in (c).

11-10-522. Claims — Determination.**(a) IN GENERAL.**

(1)(A) A monetary determination upon a claim filed pursuant to § 11-10-521(a) shall be made promptly by the Director of the Division of Workforce Services and shall include total wage credits as reported paid by each employer during the claimant's base period and the identity of each base-period employer.

(B)(i) For a claimant who meets the wage requirements of § 11-10-507(5), this notice shall include the beginning date of his or her benefit year, his or her basic weekly benefit amount, and the maximum amount of benefits that may be paid to him or her during the benefit year.

(ii) For a claimant who does not meet the wage requirements of § 11-10-507(5), the notice of monetary determination shall include the reason for such determination.

(2) A nonmonetary determination of a claimant's right to waiting period credit or benefits shall be made under §§ 11-10-507 — 11-10-519 promptly upon his or her timely claiming such credit or benefits.

(b) **COMBINATION OF CLAIM.** Whenever any claim involves the same issue for more than one (1) claimant, the cases will be combined for the purpose of a hearing if a request to do so is received. If the request is made by any interested party, the director shall refer those cases to a hearing examiner designated by the Board of Review.

(c) **FINALITY.** The decision shall include the reason for any denial and shall be deemed to be final unless within twenty (20) days after the mailing of notice to an interested party's last known address, or in the absence of mailing, within twenty (20) days after the delivery of notice, an appeal is filed with the board or notice is entered by that body.

(d) NOTICE OF DETERMINATIONS.

(1)(A) Notice of any monetary determination upon an initial claim shall be promptly given to the claimant, by delivery or by mailing the notice to his or her last known address.

(B) A notice of the filing of an initial claim, together with a request for pertinent information concerning claimant's status, shall be promptly mailed to each employer in the base period other than the employer known to the claimant as his or her last employer if the charges to the base-period employer could be affected by benefits paid.

(2)(A) Notice of a nonmonetary determination made pursuant to subdivision (a)(2) of this section shall be promptly given to the claimant by delivery or by mailing the notice to his or her last known address.

(B) Effective January 1, 1998, a notice of this nonmonetary determination shall be promptly mailed to the last employer.

(e) MONETARY REDETERMINATIONS.

(1) The director may reconsider a monetary determination when he or she finds that an error in computation or identity has occurred in

connection therewith or that base-period wage credits for the claimant had not been used in the original monetary determination.

(2) No reconsideration may be made after one (1) year from the date of the original monetary determination.

(3) If the amount of benefits is increased upon the reconsideration, an appeal solely with respect to the matters involved in the increase may be filed in the manner and subject to the limitations provided in §§ 11-10-523 — 11-10-530.

(4) If the amount of benefits is decreased upon the reconsideration, the matters involved in the decrease shall be subject to review in connection with an appeal by claimant from any determination upon a subsequent claim for benefits that may be affected in amount or duration by the reconsideration.

(5) In the event that an appeal involving an original monetary determination is pending as of the date that a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

(6) Written notice of a monetary redetermination shall be given in the same manner and to the same parties as provided in subdivision (d)(1) of this section.

(f) NONMONETARY REDETERMINATIONS.

(1)(A) Upon receipt of new evidence, the director may reconsider a nonmonetary determination within three (3) years from the date of the original monetary determination.

(B) However, if benefits have been awarded or denied on the basis of a misrepresentation of a material fact, the director may reconsider the nonmonetary determination within one (1) year of the date that the misrepresentation became known to him or her.

(2) In the event that an appeal involving an original nonmonetary determination is pending as of the date that a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

(3) Written notice of a nonmonetary redetermination shall be given in the same manner and to the same parties as provided in subdivision (d)(2) of this section.

History. Acts 1941, No. 391, § 6; 1943, No. 138, §§ 1, 2; 1949, No. 155, §§ 6, 7; 1953, No. 162, §§ 4-6; 1963, No. 93, § 7; 1971, No. 35, § 10; 1973, No. 329, § 9; 1975, No. 609, § 3; 1977, No. 366, § 8; 1983, No. 482, § 37; A.S.A. 1947, § 81-1107; Acts 1991, No. 100, § 29; 1997, No. 234, § 14; 2005, No. 902, § 6; 2007, No. 490, § 7; 2009, No. 653, § 5; 2019, No. 910, § 252.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1)(A).

CASE NOTES

Notice.

Unemployment benefits board of review fulfilled its legal obligation of providing notice to a claimant's correct address, and as all other correspondence and notifications sent by the board had successfully

reached that address, the claimant's assertion that he never received a notice advising him that an award of benefits had been reversed failed. *Worden v. Director, Dep't of Workforce Servs.*, 2013 Ark. App. 579 (2013).

11-10-523. Board of Review created — Administrative appeal — Claims.

(a)(1) There is created a Board of Review which shall consist of three (3) members.

(2) The members of the board shall be appointed by the Governor for a term of office of four (4) years or until their successors are appointed and qualified. The four-year terms are to run concurrently with the term of the office of the Governor.

(3) A member of the board may be removed by the Governor for cause after hearing.

(4) Vacancies shall be filled by appointment by the Governor for the unexpired term.

(b)(1) The Governor shall designate as Chair of the Board of Review the member selected to represent the public at large.

(2) The chair shall be paid a full-time salary and devote all of his or her time to his or her duties herein prescribed.

(3) The chair shall have a four-year term beginning with the year 2003 appointment.

(c)(1)(A) The other two (2) members of the board are to serve when requested to serve by the chair of the board at his or her own discretion.

(B) If any interested party requests in writing a review by the full board, then the chair shall direct board members to attend and review the matters as requested by the petitioner.

(2) The members of the board other than the chair may receive expense reimbursement and stipends to be paid from the Employment Security Administration Fund in accordance with § 25-16-901 et seq.

(d) The chair shall appoint some competent person as an examiner and reporter for the board. That person shall have authority under the direction of the chair of the board to:

(1) Hold hearings on appeals and take testimony and submit it to the chair with recommendations, which question shall be determined by the chair. The person, when holding hearings under the direction of the chair, shall have the same authority as the chair or members of the board, except that he or she shall not have the authority to render any decision therein;

(2) Take and transcribe all testimony taken either before the examiner, the chair, or the board; and

(3) Act as secretary for the board.

(e)(1) The members of the board shall be selected as follows:

(A) One (1) member shall be, because of his or her vocation, occupation, or affiliation, deemed to be representative of employers;

(B) One (1) member shall be, because of his or her vocation, occupation, or affiliation, deemed to be representative of employees; and

(C) The chair shall be a licensed practicing attorney who, because of his or her vocation, occupation, or affiliation, is deemed not to be representative of employers or employees.

(2) All members shall be selected without regard to § 11-10-310.

(3) The examiner and reporter shall be selected in accordance with the merit system provided for in § 11-10-310.

(f) The chair, the members, and the examiner and reporter, as provided for above, shall all receive their actual and necessary expenses incurred, in accordance with the rules of the Division of Workforce Services.

(g)(1)(A) To hear and decide appeal claims, the board created by this section shall appoint one (1) or more impartial appeal tribunals.

(B) Each tribunal shall consist of either a hearing officer selected in accordance with § 11-10-310 or a body consisting of three (3) members, one (1) of whom shall be a representative of employers and the other of whom shall be a representative of employees.

(C) Each of the latter two (2) members may be selected without regard to § 11-10-310, shall serve at the pleasure of the board, and may be paid a fee of not more than twenty-five dollars (\$25.00) per day of active service on such tribunal plus necessary expenses and shall be paid from the Employment Security Administration Fund.

(2)(A) The board shall designate alternates to serve in the absence or disqualification of any member of an appeal tribunal.

(B) The chair shall act alone in the absence or disqualification of any other member or his or her alternates. In no case shall the hearing proceed unless the chair of the appeal tribunal is present.

(C) The Director of the Division of Workforce Services shall provide the board and appeal tribunals with proper facilities and assistance for the execution of their functions.

(D) The appeal hearing officer, as such, shall have all power bestowed on him or her as chair of the appeals tribunal.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 3; 1943, No. 263, § 2; 1947, No. 398, § 5; 1953, No. 162, § 7; 1975, No. 609, § 4; 1985, No. 8, § 7; 1985, No. 9, § 7; A.S.A. 1947, § 81-1107; Acts 1991, No. 100, §§ 30, 31; 1995, No. 519, § 6; 1997, No. 234, § 15; 1997, No. 250, § 61; 2001, No. 1467, §§ 3-6; 2019, No. 315, § 823; 2019, No. 910, §§ 253, 254.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (f).

The 2019 amendment by No. 910 substituted “Division of Workforce Services” for “Department of Workforce Services” in (f); and substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (g)(2)(C).

11-10-524. Claims — Administrative appeal — Filing and hearing.

(a)(1) The claimant, the Director of the Division of Workforce Services, or any other party entitled to notice may appeal a determination made by the agency by filing a written notice of appeal with the appeal tribunal or at any office of the Division of Workforce Services within twenty (20) calendar days after the date of mailing the notice to his or her last known address, or if the notice is not mailed, within twenty (20) calendar days after the date of delivery of the notice. If mailed, an appeal shall be considered to have been filed as of the date of the postmark on the envelope.

(2) However, if it is determined by the appeal tribunal or the Board of Review that the appeal is not perfected within the twenty-calendar-day period as a result of circumstances beyond the appellant's control, the appeal may be considered as having been filed timely.

(b)(1) Unless the appeal is withdrawn with its permission or is removed to the board, the appeal tribunal, after affording the parties a reasonable opportunity for a fair hearing, and on the basis of the record, shall affirm, modify, reverse, dismiss, or remand the determination.

(2) However, whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employing unit, the appeal tribunal shall give special notice of the issue and of the pendency of the appeal to the employing unit and to the director, both of whom shall be parties to the proceedings and be afforded a reasonable opportunity to present evidence bearing on the question in issue.

(3) The appeal tribunal shall grant upon request from any interested party in an intrastate claim an in-person hearing.

(c)(1) The parties shall be promptly notified of the tribunal's decision and shall be furnished a copy of the decision and the findings and conclusions in support thereof.

(2) The decision shall become final unless within twenty (20) calendar days after the date of mailing the notice to the parties' last known addresses an appeal is initiated pursuant to § 11-10-525 or a request for reopening is made pursuant to subsection (d) of this section.

(d)(1) If any party fails to appear at the initial tribunal hearing scheduled as a result of an appeal, that party may request that the matter be reopened by the tribunal.

(2) Requests for reopening shall be made in writing and shall be granted by the tribunal only upon a showing of good cause for failing to appear at the initial tribunal hearing.

(3)(A)(i) If a request for reopening is granted, the tribunal shall schedule another hearing, after which it will issue a new decision.

(ii) If a request for reopening is not granted, the tribunal's initial decision shall stand as issued.

(B)(i) In either event, the parties shall be promptly notified of the tribunal's decision and shall be furnished a copy of the decision and the findings and conclusions in support thereof.

(ii) The decision shall become final unless within twenty (20) calendar days after the date of its mailing to the parties' last known addresses an appeal is initiated pursuant to § 11-10-525.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 4; 1953, No. 162, § 6; 1975, No. 609, § 5; 1983, No. 482, §§ 22, 37, 38; A.S.A. 1947, § 81-1107; Acts 1991, No. 48, § 5; 1991, No. 100, § 32; 1993, No. 6, § 9; 1997, No. 234, §§ 16-18; 2003, No. 1223, §§ 8, 9; 2009, No. 802, § 6; 2019, No. 910, § 255.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" twice in (a)(1); and deleted "of the department" following "Board of Review" in (a)(2).

CASE NOTES

ANALYSIS

Failure to Appear.
Timeliness of Appeal.

Failure to Appear.

Board of Review's determination that an unemployment compensation claimant failed to show good cause for not participating in a hearing under subdivision (d)(1)-(2) of this section was reversed; the claimant's attorney attempted to participate in the telephonic hearing but was prevented from doing so by technical difficulties not of her making. *Sims v. Director*, 2013 Ark. App. 241 (2013).

Timeliness of Appeal.

Board found that the evidence was insufficient to demonstrate that appellant had visited her local office, and although she testified that she had, her credibility was a matter for the board and not the court; furthermore, her testimony never indicated that she visited the office prior to the appeal deadline, and the Board did not err in finding that she did not prove her late appeal was due to circumstances beyond her control. *Term v. Williams*, 2015 Ark. App. 144, 457 S.W.3d 291 (2015).

11-10-525. Claims — Administrative appeal — Review by Board of Review.

CASE NOTES

ANALYSIS

Evidence.
Review.

Evidence.

Finding that the employee was disqualified from receiving unemployment benefits was appropriate and because it appeared from the record that both parties had a fair opportunity to present their evidence at the hearing, there was no abuse of discretion in denial of the employee's request to take additional evidence. *Ramirez v. Director*, 2013 Ark. App. 453 (2013).

Review.

Board of Review did not exceed its authority or abuse its discretion in reviewing the Tribunal's decision because pursuant to subsection (b), it was entitled to review the Tribunal's decision. *McCuller-Silverman v. Dir., Dep't of Workforce Servs.*, 2017 Ark. App. 606, 534 S.W.3d 748 (2017).

Cited: *Hubbard v. Dir., Dep't of Workforce Servs.*, 2015 Ark. App. 235, 460 S.W.3d 294 (2015).

11-10-526. Claims — Administrative appeal — Procedure.

(a)(1) The Board of Review, appeal tribunal, and special examiners shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before the tribunals shall be conducted in such manner as to ascertain the substantial rights of the parties.

(2) In like manner as provided at § 11-10-307(a) for the adopting, amending, or rescinding of general rules by the Director of the Division of Workforce Services, the board may adopt reasonable rules governing the manner of filing appeals, the conduct of hearings, and other appellate procedures, consistent with this chapter.

(b) Hearings on appeals before an appeals tribunal or before the board shall not be held sooner than five (5) days from the date of the mailing of notice thereof to the parties to the appeal.

(c) When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one (1) individual or in claims by a single individual with respect to two (2) or more weeks of unemployment, the same time and place for considering each claim may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one (1) proceeding considered as introduced in the others, provided that in the judgment of the examiner or tribunal having jurisdiction of the proceeding, consolidation would not be prejudicial to any party.

(d) No person shall participate on behalf of the director or the board in any case in which he or she has a direct or indirect interest.

(e) A record shall be kept of all testimony and proceedings before special examiners or in connection with an appeal, but the testimony need not be transcribed unless further review is initiated.

(f) Witnesses subpoenaed pursuant to §§ 11-10-520 — 11-10-532 shall be allowed fees at a rate fixed by the director, and fees of witnesses subpoenaed on behalf of the director or any claimant shall be deemed part of the expense of administering this chapter.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 6; 1983, No. 482, § 24; A.S.A. 1947, § 81-1107; Acts 1997, No. 234, § 19; 2009, No. 802, § 8; 2019, No. 315, § 824; 2019, No. 910, § 256.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (a)(2).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(2).

11-10-527. Claims — Conclusiveness of determinations and decisions.

(a) Except insofar as reconsideration of any determination is had under the provisions of § 11-10-522, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination that has become final, or in a decision on appeal under §§ 11-10-523 — 11-10-530 that has become final, shall be conclusive for all the purposes of this chapter as between the Director of the Division

of Workforce Services, the claimant, and all employing units who had notice of the determination, redetermination, or decision.

(b) Subject to appeal proceedings and judicial review as provided in §§ 11-10-520 — 11-10-532, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the purposes of this chapter and shall not be subject to collateral attack by any employing unit, irrespective of notice.

History. Acts 1941, No. 391, § 6; A.S.A. substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).
1947, § 81-1107; Acts 2019, No. 910, § 257.

Amendments. The 2019 amendment

11-10-528. Claims — Administrative appeal — Rule of decision.

(a) The final decisions of the Board of Review or of an appeal tribunal, and the principles of law declared by it in arriving at the decisions, unless expressly or impliedly overruled by a later decision of the board or by a court of competent jurisdiction, shall be binding upon the Director of the Division of Workforce Services and any examiner or appeal tribunal in subsequent proceedings which involve similar questions of law.

(b)(1) However, if in connection with any subsequent proceeding, the director, an examiner, or appeal tribunal has serious doubt as to the correctness of any principle so declared, then they may certify their findings of fact in the case, together with the question of law involved, to the board.

(2) After giving notice and reasonable opportunity for hearing upon the law to all parties to the proceedings, the board shall certify to the director, the examiner, or appeal tribunal and the parties its answer to the question submitted.

(c) If the question thus certified to the board arises in connection with a claim for benefits, the board in its discretion may remove to itself the entire proceedings on the claim. After proceeding in accordance with the requirements of §§ 11-10-523 — 11-10-530 with respect to proceedings before an appeal tribunal, the board shall render its decision upon the entire claim.

(d) Any decision made under this section after removal of the proceeding upon a claim to the board shall have the effect of a decision under § 11-10-525 and shall be subject to judicial review within the same time and to the same extent.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 7; A.S.A. 1947, § 81-1107; Acts 2019, No. 910, § 258. substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

Amendments. The 2019 amendment

11-10-529. Claims — Decision of Board of Review — Judicial review.

(a)(1)(A) Any party entitled to a decision of the Board of Review shall have thirty (30) calendar days from the date the decision is mailed to his or her last known address in which to request a judicial review by filing in the Court of Appeals a petition for review of the decision, and in the proceedings any other party to the proceeding before the board shall be made a party respondent.

(B)(i) If mailed, a petition for review shall be considered filed as of the date of the postmark on the envelope.

(ii) In the event of a nonexistent or illegible postmark, the Clerk of the Court of Appeals shall notify the appellant by mail.

(iii) The appellant shall then have ten (10) calendar days from the posted mailing date of the clerk's notification letter to provide the court proof of timely mailing of the request for judicial review by producing a delivery confirmation or a certified mail return receipt document bearing evidence of the accurate post date.

(2)(A) The petition for review need not be verified but shall state the grounds upon which the review is sought.

(B) The Director of the Division of Workforce Services is made a party to the proceedings.

(C) The petition shall be served upon the director by leaving with him or her, or such representative as he or she may designate for that purpose, as many copies of the petition as there are respondents.

(b)(1)(A) With his or her answer or petition, the director shall file with the court a certified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings, conclusions, and decision.

(B) The record shall be certified by the Chair of the Board of Review.

(2)(A) Upon the filing of a petition for review by the director or upon the service of the petition on him or her, the director shall forthwith send by mail to each of the parties to the proceeding a copy of the petition.

(B) The mailing shall be deemed to be completed service upon all such parties.

(c)(1) In any proceeding under §§ 11-10-523 — 11-10-530, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to questions of law.

(2)(A) No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the board.

(B) The board may, after hearing the additional evidence, modify its findings of fact or conclusions and file the additional or modified findings and conclusions, together with a certified transcript of the additional record, with the clerk.

(d)(1) The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workers' Compensation Law, § 11-9-101 et seq.

(2) It shall not be necessary as a condition precedent to judicial review of any decision of the board to enter exceptions to the rulings of the board.

(3) No bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court upon the review.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 8; 1953, No. 162, § 10; 1979, No. 252, § 2; 1981, No. 43, § 9; 1983, No. 482, § 38; A.S.A. 1947, § 81-1107; Acts 1997, No. 234, § 20; 2003, No. 1223, § 11; 2013, No. 956, § 2; 2019, No. 910, § 259.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(2)(B).

CASE NOTES

Findings of Facts.

Substantial evidence supported the finding that the claimant's acts were against her employer's best interests and that she was discharged for misconduct in connection with the work, because the

claimant failed to follow routing procedures, and failed to review and edit a document before it was submitted to the director. *Weinstein v. Dir.*, 2013 Ark. App. 374, 428 S.W.3d 560 (2013).

11-10-530. Claims — Administrative appeal — Representation.

(a) The Director of the Division of Workforce Services shall be a party entitled to notice in any proceeding involving a claim for benefits before a special examiner, an appeal tribunal, or the Board of Review.

(b) In any proceeding for judicial review pursuant to § 11-10-529, the director may be represented by any qualified attorney employed by the director and designated by him or her for that purpose, or at the director's request by the Attorney General.

History. Acts 1941, No. 391, § 6; 1943, No. 138, § 9; 1953, No. 162, §§ 4-10; A.S.A. 1947, § 81-1107; Acts 2019, No. 910, § 260.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

11-10-532. Claims — Recovery.

(a)(1) If the Director of the Division of Workforce Services finds that a person knowingly has made a false statement or misrepresentation of a material fact or knowingly has failed to disclose a material fact and as a result of either action has received benefits under this chapter to which he or she was not entitled, then he or she is liable to repay the amount to the Unemployment Compensation Fund.

(2) Once the overpayment becomes final under § 11-10-527, the amount owed shall accrue interest at the rate of ten percent (10%) per

annum beginning thirty (30) days after the date of the first billing statement.

(3)(A)(i) A penalty of fifty percent (50%) of the amount of the overpayment at the time the overpayment becomes final shall be assessed on all fraudulent overpayments.

(ii) An overpayment established under this subsection that is repaid within thirty (30) days of the mailing date of the determination shall be assessed a reduced penalty of fifteen percent (15%).

(B) An overpayment established under this subsection that is determined to have been as a result of benefits collected fraudulently, as well as any other penalties, interest, and costs assessed as a result of the fraudulent activity, shall be repaid before the person receives benefits under this chapter.

(C) The portion of the penalty assessed under subdivision (a)(3)(A) of this section in excess of fifteen percent (15%) of the overpayment shall be deposited into a subaccount of the Division of Workforce Services Special Fund under § 19-5-984, to be entitled the "UI Integrity Fund" that shall be used exclusively for integrity-related activities arising under this chapter.

(b)(1) If the director finds that a person has received an amount as benefits under this chapter to which he or she was not entitled by reasons other than fraud, willful misrepresentation, or willful nondisclosure of facts, the person is liable to repay the amount to the Unemployment Compensation Fund.

(2)(A) In lieu of requiring the repayment, the director may recover the amount by deduction of any future benefits payable to the person under this chapter unless the director finds that the overpayment was received as a direct result of an error by the Division of Workforce Services and that its recovery would be against equity and good conscience.

(B) As used in subdivision (b)(2)(A) of this section, "direct result of an error by the Division of Workforce Services" does not include overpayments established under an appeal reversal as a result of the successful appeal of a denial of benefits.

(c) A person held liable to repay an amount to the Unemployment Compensation Fund is subject to having any state income tax refund to which he or she may be entitled intercepted pursuant to § 26-36-301 et seq., as administered by the Revenue Division of the Department of Finance and Administration.

(d)(1) When an overpayment becomes final under § 11-10-527, the director shall present a certificate of overpayment describing the amount owed by the claimant to the circuit clerk of the county where the claimant is domiciled.

(2) The circuit clerk shall enter the certificate of overpayment in the docket of the circuit court for judgments and decrees and note the time of the filing of the certificate.

(3) After entry by the circuit clerk, the certificate of overpayment shall have the force of a judgment of the circuit court and shall bear interest at the rate of ten percent (10%) annually.

(4) An interest payment recovered from an overpayment to a claimant shall be deposited into the Division of Workforce Services Special Fund.

(5) A penalty payment recovered from an overpayment to a claimant shall be deposited into the Unemployment Compensation Fund.

(e) The federal income tax refund of a person held liable to repay an amount to the Unemployment Compensation Fund is subject to interception under the Claims Resolution Act of 2010, Pub. L. No. 111-291, or a regulation adopted to implement that law.

(f) The Division of Workforce Services may issue an overpayment determination contemporaneously with any other determination.

(g) The deductions from future benefits provided for in subdivisions (a)(1) and (b)(2) of this section may proceed during an appeal of the overpayment determination.

History. Acts 1941, No. 391, § 6; 1963, No. 93, § 8; 1981, No. 43, § 10; 1985, No. 8, § 7; 1985, No. 9, § 7; A.S.A. 1947, § 81-1107; Acts 1987, No. 753, § 16; 1993, No. 6, § 10; 1997, No. 234, § 21; 1999, No. 1116, §§ 13, 14; 2001, No. 1367, § 8; 2005, No. 902, § 7; 2007, No. 490, § 9; 2009, No. 802, §§ 9-11; 2011, No. 1040, § 3; 2013, No. 956, § 3; 2019, No. 453, §§ 9, 10; 2019, No. 910, §§ 261-263.

Amendments. The 2019 amendment by No. 453 deleted “or the director may recover the amount of the overpayment by deductions from any future benefits payable to the person under this chapter” from the end of (a)(1); redesignated (a)(3) as (a)(3)(A)(i); substituted “fifty percent (50%)” for “fifteen percent (15%)” in (a)(3)(A)(i); added (a)(3)(A)(ii), (a)(3)(B),

and (a)(3)(C); redesignated (b)(2) as (b)(2)(A); substituted “as a direct result of an error by the Division of Workforce Services” for “without fault on the part of the recipient” in (b)(2)(A); added (b)(2)(B); and made a stylistic change.

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1); substituted “Division of Workforce Services Special Fund” for “Department of Workforce Services Special Fund” in (d)(4); and substituted “Division of Workforce Services” for “Department of Workforce Services” in (f).

Effective Dates. Acts 2019, No. 453, § 11: Oct. 1, 2019.

CASE NOTES

Overpayment.

In a case concerning the repayment of unemployment benefits under subsection (b) of this section, a claimant was at fault in causing an overpayment for the time period after she filed a disability claim. However, a remand was necessary as to whether the claimant was at fault for overpayment during the time period before she filed for disability; although the claimant was subsequently determined by the Social Security Administration to be totally disabled for this time period, the claimant thought she was physically capable of working according to her testimony. *Johnson v. Director, Dep’t of Workforce Servs.*, 2013 Ark. App. 74 (2013).

Unemployment insurance benefits

claimant was required to repay benefit amounts he was overpaid because given that he had a fixed income, a small household with no mortgage on his home, and significant monthly income remaining after paying expenses, recovery was not against equity and good conscience. *Worden v. Director, Dep’t of Workforce Servs.*, 2013 Ark. App. 579 (2013).

Appeal Tribunal’s decision finding an employee liable to repay unemployment benefits was remanded because it was not found that he made a “knowing” misrepresentation or omission to the Department of Workforce Services, or, if such findings were made regarding a related overpayment proceeding, the findings were not in the record on appeal, so the

Appeal Tribunal rendered no findings on the issue presented of whether the employee's failure to correctly report his earnings during certain weeks was knowingly fraudulent, under subsection (a) of this section. *Patterson v. Dir.*, 2014 Ark. App. 113 (2014).

Where the debtor sought to characterize two certificates of overpayment of unemployment benefits as judicial liens amenable to avoidance and not statutory liens that would not be avoidable, analysis of

facts and appropriate law compelled the conclusion that the certificates represented avoidable judicial liens as they did not arise solely by force of a statute on specified circumstances or conditions, but rather as a result of other legal or equitable process or proceeding, as defined in the Bankruptcy Code. In re *Leaks*, 552 B.R. 741 (Bankr. E.D. Ark. 2016), *aff'd*, Ark. Dep't of Workforce Servs. v. *Leaks*, No. 5:16CV00267 JLH, 2017 U.S. Dist. LEXIS 91306 (E.D. Ark. June 14, 2017).

11-10-533. Claims — Investigation of claims filed by state employees.

(a) The Division of Workforce Services shall investigate all claims for benefits filed by state employees whether or not the employing state agency lodges a protest to the payment of the benefits.

(b) The investigation shall result in a determination of the eligibility of the employee for payment of benefits.

History. Acts 1977, No. 925, § 3; 1991, No. 100, § 33; 2019, No. 910, § 264.

Amendments. The 2019 amendment

substituted "Division of Workforce Services" for "Department of Workforce Services" in (a).

11-10-534. Extended benefits — Definitions.

As used in this section and §§ 11-10-535 — 11-10-543, unless the context clearly requires otherwise:

(1) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law;

(2) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within that extended benefit period, any weeks thereafter which begin in that period;

(3) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(A)(i) Has received, prior to that week, all of the regular benefits that were available to him or her under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. § 8501 et seq. in his or her current benefit year that includes that week.

(ii) For the purposes of this subdivision (3)(A), an individual shall be deemed to have received all of the regular benefits that were available to him or her although:

(a) As a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or

(b) He or she may be entitled to regular benefits with respect to future weeks of unemployment, but benefits are not payable with respect to such week of unemployment by reason of the provisions of § 11-10-506 or the parallel provisions of any other state law;

(B) His or her benefit year having expired prior to such week, he or she has no wages or insufficient wages on the basis of which he or she could establish a new benefit year that would include that week or, having established a benefit year, no regular compensation is payable to him or her during that year because his or her wage credits were cancelled or his or her right to regular compensation was totally reduced as a result of the application of disqualification;

(C)(i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada. If he or she is seeking benefits and the appropriate agency finally determines that he or she is not entitled to benefits under law, he or she is considered an exhaustee. However, this provision shall not be applicable to individuals seeking benefits under the unemployment compensation laws of the Virgin Islands on and after the date the Virgin Islands meets the definition of a state as set forth in § 11-10-213;

(4) "Extended benefit period" means a period that:

(A) Begins with the third week after the first week for which there is a state "on" indicator; and

(B) Ends with:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period;

(C) Provided that no extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(5) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. § 8501 et seq. payable to an individual under the provisions of this section for weeks of unemployment in his or her eligibility period;

(6) There is a state "off" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, either subdivision (7)(A) or subdivision (7)(B) of this section was not satisfied;

(7) There is a state "on" indicator for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve (12) weeks:

(A) Equalled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years; and

(B) Equalled or exceeded four percent (4%), provided that for periods beginning on and after September 25, 1982, such rate equalled or exceeded five percent (5%); except that effective July 1, 1991, the rate of insured unemployment equalled or exceeded six percent (6%) even though the provisions of subdivision (7)(A) of this section were not met;

(8) "Rate of insured unemployment", for purposes of subdivision (7) of this section, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive week period, as determined by the Director of the Division of Workforce Services on the basis of his or her reports to the United States Secretary of Labor; by

(B) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen-week period; and

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

History. Acts 1971, No. 35, § 21; 1973, No. 350, §§ 5-7; 1975, No. 609, §§ 13-15; 1975 (Extended Sess., 1976), No. 1083, § 11; 1977, No. 376, §§ 17, 18; 1979, No. 492, § 15; 1979, No. 922, § 15; 1981 (1st Ex. Sess.), No. 37, §§ 3-5; 1983, No. 482, § 35; A.S.A. 1947, § 81-1124; reen. Acts

1987, No. 672, § 10; 1991, No. 48, § 6; 2019, No. 910, § 265.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (8)(A).

11-10-535. Extended benefits — Effect of provisions relating to regular benefits.

Except when the result would be inconsistent with the other provisions of this section, as provided in the rules of the Director of the Division of Workforce Services, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

History. Acts 1971, No. 35, § 21; A.S.A. 1947, § 81-1124; Acts 2019, No. 315, § 825; 2019, No. 910, § 266.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations".

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services".

11-10-536. Extended benefits — Eligibility.

An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the Director of the Division of Workforce Services finds that with respect to that week:

(1) He or she is an exhaustee as defined in § 11-10-534(3);

(2) He or she has satisfied the requirements of §§ 11-10-534 — 11-10-543 for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(3)(A) He or she was paid wages that exceeded forty (40) times his or her weekly benefit amount during the base period that established his or her last benefit year for the receipt of regular benefits;

(B) He or she has one and one-half (1½) times his or her insured wages in the calendar quarter of the base period in which his or her insured wages were the highest; or

(C) He or she has provided evidence of twenty (20) weeks of full-time insured employment in the base period that served as the basis for his or her extended benefits claim.

History. Acts 1971, No. 35, § 21; 1981 (1st Ex. Sess.), No. 37, § 6; 1983, No. 482, §§ 35, 36; A.S.A. 1947, § 81-1124; Acts 1993, No. 6, § 11; 2019, No. 910, § 267.

substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of the section.

Amendments. The 2019 amendment

11-10-539. Extended benefits — Period and computations.

(a) Whenever an extended benefit period is to become effective in this state as a result of a state “on” indicator or an extended benefit period is to be terminated in this state as a result of a state “off” indicator, the Director of the Division of Workforce Services shall have published an appropriate notice in newspapers of general circulation in the state.

(b) Whenever during a period when emergency unemployment compensation benefits are being paid under the Emergency Unemployment Compensation Act of 1991 or under any subsequent extension or reenactment thereof, the state “on” indicator, as defined in § 11-10-534, triggers on a period of extended benefits, the Governor may elect not to implement the applicable state statutory provisions relative to unemployment compensation, including, but not limited to, §§ 11-10-534 — 11-10-543, and to continue the payment of benefits under the Emergency Unemployment Compensation Act of 1991 to those individuals who have exhausted their entitlement to regular unemployment compensation under state law.

(c) Computations required by the provisions of § 11-10-534(8) shall be made by the director in accordance with regulations prescribed by the United States Secretary of Labor.

History. Acts 1971, No. 35, § 21; 1983, No. 482, § 36; A.S.A. 1947, § 81-1124; Acts 1993, No. 6, § 12; 2019, No. 910, § 268.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-541. Extended benefits — Overpayments.

The Director of the Division of Workforce Services shall establish and recover extended benefit overpayments in the manner prescribed in § 11-10-532.

History. Acts 1971, No. 35, § 21; 1977, No. 366, § 10; 1981, No. 43, § 17; A.S.A. 1947, § 81-1124; Acts 2019, No. 910, § 269.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services”.

11-10-543. Extended benefits — Failure to accept or seek suitable work — Definition.

(a) Notwithstanding the provisions of § 11-10-535, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the Director of the Division of Workforce Services finds that during that period:

(1) He or she failed to accept any offer of suitable work or failed to apply for any suitable work as defined under subsection (c) of this section to which he or she was referred by the director; or

(2) He or she failed to actively engage in seeking work as prescribed under subsection (f) of this section, unless he or she did not actively engage in seeking work because he or she was before any court of the United States or of any state pursuant to a lawfully issued summons to appear for jury duty. In that event, his or her entitlement to benefits shall be decided pursuant to the able and available requirements of § 11-10-507, without regard to the disqualification provisions otherwise applicable under subsection (b) of this section.

(b) Any individual who has been found ineligible for extended benefits by reason of the provision in subsection (a) of this section shall also be ineligible for extended benefits beginning with the first day of the week following the week in which the failure occurred and until he or she has been employed in each of four (4) subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four (4) times his or her extended weekly benefit amount.

(c) For purposes of this section, the term “suitable work” means, with respect to any individual, any work that is within the individual’s capabilities, provided that:

(1) The gross average weekly remuneration payable for the work exceeds the sum of the individual’s average weekly benefit amount, as determined under § 11-10-537, plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954 payable to the individual for that week; and

(2) The work pays wages equal to the higher of:

(A) The minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(B) The state or local minimum wage.

(d) No individual shall be denied extended benefits for failure to accept an offer of, or referral to, any job which meets the definition of suitability as described in subsection (c) of this section if:

(1) The position was not offered to the individual in writing and was not listed with the employment service;

(2) The failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 11-10-515 to the extent that the criteria of suitability in § 11-10-515 are not inconsistent with the provisions of this section; or

(3) The individual furnishes satisfactory evidence to the director that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to an individual shall be made in accordance with the definition of suitable work in § 11-10-515 without regard to the definition specified by this section.

(e) Notwithstanding the provision of this section to the contrary, no work shall be deemed to be suitable work for an individual that does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under § 11-10-515.

(f) For the purposes of subdivision (a)(2) of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(1) The individual has engaged in a systematic and sustained effort to obtain work during the week; and

(2) The individual furnishes tangible evidence that he or she has engaged in effort during the week.

(g) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subsections (c) and (d) of this section.

(h) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if the individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct, or refused an offer of suitable work unless the disqualification imposed for those reasons was satisfied with employment.

(i) The Division of Workforce Services shall enforce this section.

(j) The director shall make quarterly reports to the Legislative Council on the division's efforts to enforce this section, including without limitation:

(1) The number of cases of benefit recipients accused of not accepting valid job offers;

(2) The disposition of cases reported under subdivision (j)(1) of this section; and

(3) The policies and steps the division is taking to eliminate and reduce refusals to accept valid job offers.

(k)(1) The division shall facilitate electronic reporting of a benefit recipient who refuses to take an offered job either through outright refusal, failing a drug test, or other means.

(2) The division may facilitate electronic reporting under subdivision (k)(1) of this section by an easy-to-understand and -use website created for the purpose or created for another purpose that facilitates easy reporting by potential employers and others.

(1)(1) The division shall notify periodically an employer regarding the method for reporting a benefit recipient who fails to take a job either through outright refusal, failing a drug test, or other means.

(2) The division may notify an employer at least two times (2) per year regarding the method for reporting under subdivision (1)(1) of this section by electronic means that are economically feasible and may be a part of another communication to the employer.

(m)(1) An employer that provides a report with the belief that it is true of a failure to take a job, whether by outright refusal, failure to show up for work or interview, failing a drug test, or other means is not liable for the reporting.

(2) This section provides a complete defense for an employer in a civil proceeding arising from an employer's actions under this section.

History. Acts 1971, No. 35, § 21; 1981, No. 43, § 19; 1985, No. 8, § 31; 1985, No. 9, § 31; A.S.A. 1947, § 81-1124; Acts 2013, No. 1040, § 1; 2019, No. 910, §§ 270-273.

Amendments. The 2019 amendment substituted "Director of the Division of

Workforce Services" for "Director of the Department of Workforce Services" in (a); substituted "Division of Workforce Services" for "Department of Workforce Services" in (i); and substituted "division" for "department" throughout (j) through (l).

11-10-544. Reciprocal arrangements with state and federal agencies.

(a) The Director of the Division of Workforce Services is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than one (1) state shall be deemed to be services performed entirely within any one (1) of the states:

(A) In which any part of the individual's service is performed;

(B) In which the individual has his or her residence; or

(C) In which the employing unit maintains a place of business, provided there is in effect, as to the services, an election, approved by the agency charged with the administration of the state's unemployment compensation law, pursuant to which all the services performed by the individual for the employing unit are deemed to be performed entirely within the state;

(2) Potential rights to benefits accumulated under the unemployment compensation laws of one (1) or more states or under one (1) or more laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under

terms that the director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3)(A) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her rights to benefits under this chapter. Wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter, shall be deemed to be wages or services on the basis of which unemployment compensation under the law of another state or of the federal government is payable.

(B) No arrangement shall be entered into unless it contains provisions for reimbursements to the fund for the benefits paid under this chapter upon the basis of the wages or services and provisions for reimbursements from the fund for such of the compensation paid under the other law upon the basis of wages for insured work as the director finds will be fair and reasonable as to all affected interests; and

(4) Contributions due under this chapter with respect to wages for insured work shall, for the purposes of §§ 11-10-716 — 11-10-722, be deemed to have been paid to the fund as of the date payment was made as contributions under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains such provisions for reimbursement to the fund of the contributions and the actual earnings thereon as the director finds will be fair and reasonable as to all affected interests.

(b)(1) Reimbursements paid from the fund pursuant to subdivision (a)(3) of this section shall be deemed to be benefits for the purpose of §§ 11-10-501 — 11-10-506, 11-10-517, and 11-10-801 — 11-10-804.

(2) The director is authorized to make to other state or federal agencies and to receive from other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c)(1) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and other states and the appropriate federal agencies in exchanging services and making available facilities and information.

(2)(A) The director is authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this chapter as he or she deems necessary or appropriate to facilitate the administration of any unemployment compensation or public employment service law.

(B) In like manner, the director is authorized to accept and utilize information, services, and facilities made available to this state by the agency charged with the administration of any other unemployment compensation or public employment service law.

(d) To the extent permissible under the laws and United States Constitution, the director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under this chapter or under a similar law of the government.

(e) The director is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government, or both, and to sign specific agreements to carry out the provisions of arrangements, and to enter into agreement with any federal agency to pay benefits as an agent of the United States Government under any law passed by the United States Congress for the purpose of paying benefits to employees of the United States or persons entitled to benefits by reason of service in the United States Armed Forces.

(f) The director is authorized to make application for loans and grants with any governmental agency under any act of the United States Congress that authorizes the making of such loans and grants.

History. Acts 1941, No. 391, § 18; 1955, No. 395, § 28; A.S.A. 1947, § 81-1121; Acts 2019, No. 910, § 274. substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in the introductory language of (a).

Amendments. The 2019 amendment

SUBCHAPTER 6 — SHARED WORK PLANS

SECTION.

- 11-10-601. Definitions.
- 11-10-604. Criteria for approval.
- 11-10-605. Approval or rejection.
- 11-10-606. Effective date and duration of plan.
- 11-10-607. Revocation of approval.

SECTION.

- 11-10-608. Modification of an approved plan.
- 11-10-609. Eligibility for compensation.
- 11-10-610. Amount of benefits — Filing of claims.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state’s unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013.”
Acts 2015, No. 907, § 15: July 1, 2015. Emergency clause provided:
“(a) It is found and determined by the General Assembly of the State of Arkansas that federal law requires the implementation of state-level workforce development acts to authorize federal funding for workforce development programs; that the Arkansas Workforce Development Board must begin work immediately to prepare for the inauguration of local workforce development boards; that the first phase of work by the Arkansas Work-

force Development Board must be completed to coincide with the beginning of the 2015-2016 fiscal year on July 1, 2015. Therefore, an emergency is declared to exist, and § 15-4-37-3704 being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

“(b) It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this act on July 1, 2015, is essential to the inauguration of the programs for which this act is provided, and that in the event of an extension of the legislative session, the delay in the effective date of this act beyond July 1, 2015, could work irreparable harm upon the proper administration and provision of essential programs created in the act. Therefore, an emer-

gency is hereby declared to exist and, except for § 15-4-3704, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2015.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

11-10-601. Definitions.

As used in this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1)(A) “Affected group” means two (2) or more employees designated by an employer to participate in a shared work plan.

(B) “Sub-group” means a group of employees which constitutes at least ten percent (10%) of the employees in an affected group;

(2) “Approved plan” means an employer’s voluntary written plan for reducing unemployment under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced, which plan meets the requirements of § 11-10-604, and which plan has been approved in writing by the Director of the Division of Workforce Services;

(3) “Fringe benefits” includes, but is not limited to, such advantages as health insurance (hospital, medical, and dental services, etc.), retirement benefits under defined benefit pension plans as defined in section 3(35) of the Employee Retirement Income Security Act of 1974, paid vacation and holidays, sick leave, etc., which are incidents of employment in addition to the cash remuneration earned;

(4) “Normal weekly hours of work” means the normal hours of work for full-time and permanent part-time employees in the affected group

when their employing unit is operating on its normal, full-time basis, not to exceed forty (40) hours and not including overtime;

(5) "Shared work benefits" means the unemployment compensation benefits payable to employees in an affected group under an approved plan as distinguished from the unemployment benefits otherwise payable under other provisions of this chapter;

(6) "Shared work employer" means an employer with a shared work plan in effect. An individual who, or an employing unit which, succeeds to or acquires, pursuant to § 11-10-710, an organization, trade, or business with a shared work plan in effect automatically becomes a shared work employer and adopts the plan if the individual or employing unit ratifies, in writing, the previously approved plan; and

(7) "Unemployment compensation" means the unemployment benefits payable under this chapter other than shared work benefits and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1991, No. 100, § 34; 2019, No. 910, § 275.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (2).

11-10-604. Criteria for approval.

(a) An employer wishing to participate in a shared work program shall submit a signed written shared work compensation plan to the Director of the Division of Workforce Services for approval.

(b) The director shall approve a shared work unemployment compensation plan only if the following criteria are met:

(1) The plan:

(A) Applies to and identifies the specified affected group; and

(B) Includes an estimate of the number of layoffs that might occur absent participation in the shared work program;

(2) The employees in the affected group or groups are identified by name, Social Security number, and by any other information required by the director;

(3) The usual weekly hours of work for employees in the affected group or groups are reduced by not less than ten percent (10%) and not more than forty percent (40%);

(4)(A) Health benefits and retirement benefits under defined benefit pension plans, as defined in section 3(35) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, and other fringe benefits will continue to be provided to employees in the affected group or groups as though their work weeks had not been reduced.

(B) However, if the employer reduces the level of benefits under subdivision (b)(4)(A) of this section for its employees who are not in the shared work group, the level of benefits may be reduced by a like amount for the employer's shared work employees;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of all layoffs that would have affected at least ten percent (10%) of the employees in the affected group or groups to which the plan applies and that would have resulted in an equivalent reduction in work hours;

(6) During the previous four (4) months, the workforce in the affected group has not been reduced by temporary layoffs of more than ten percent (10%) of the workers;

(7)(A) The plan applies to at least ten percent (10%) of the employees in the affected group.

(B)(i) If the plan applies to all employees in the affected group, the plan provides equal treatment to all employees of the group.

(ii) If the affected group is divided into subgroups, the plan provides equal treatment to employees within each subgroup;

(8)(A)(i) In the case of employees represented by an exclusive bargaining representative, the plan is approved in writing by the collective bargaining agent.

(ii) If the certification of an exclusive bargaining representative has been appealed, the bargaining representative shall be considered to be the exclusive bargaining representative for work sharing plan purposes.

(B)(i) The plan shall contain a certification by the employer that the employer has made the proposed plan available to:

(a) Each employee in the affected group for inspection; or

(b) If applicable, to the exclusive bargaining representative.

(ii) The plan shall include:

(a) A description of how the plan was made available; and

(b) If advance notice of the plan was not feasible, an explanation of why advance notice was not feasible;

(9)(A) The plan includes a certified statement by the employer that the terms and implementation of the shared work plan are consistent with any obligations the employer has under applicable federal and state laws.

(B) An employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the director receives written notice from the shared work employer that the employee has joined;

(10) On the most recent computation date preceding the date of submission of the shared work plan for approval, the total of all contributions paid on the employing unit's own behalf and credited to its account for all previous periods equaled or exceeded the regular benefits charged to its account for all previous periods;

(11) The plan shall not serve as a subsidy of seasonal employment during the off-season nor as a subsidy of temporary part-time employment or intermittent employment; and

(12) The employer agrees to:

(A) Furnish reports relating to the proper conduct of the plan;

(B) Allow the director or his or her authorized representatives access to all records necessary to verify the plan before approval; and

(C) Allow the director to monitor and evaluate application of the plan after approval.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1987, No. 753, § 7; 1991, No. 100, §§ 35, 36; 2013, No. 956, § 4; 2019, No. 910, § 276.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-605. Approval or rejection.

(a) The Director of the Division of Workforce Services shall approve or reject a plan in writing within thirty (30) days of its receipt.

(b) Only one (1) plan may be approved for any one (1) employer during any twelve-month period.

(c) The reason for rejection shall be final and non-appealable, but the employer shall be allowed to submit another plan for approval not earlier than fifteen (15) days from the date of the last rejection.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1987, No. 753, § 8; 1991, No. 100, § 37; 2019, No. 910, § 277.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-606. Effective date and duration of plan.

(a) A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the Director of the Division of Workforce Services but no earlier than the date of approval of the plan by the director.

(b)(1) It shall expire at the end of the twelfth full calendar month after its effective date or on the date specified in the plan if the date is earlier, provided that the plan is not previously revoked by the director.

(2) If a plan is revoked by the director, it shall terminate on the date specified in the director’s written order of revocation.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1987, No. 753, § 9; 1991, No. 100, § 38; 2019, No. 910, § 278.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-607. Revocation of approval.

(a)(1) The Director of the Division of Workforce Services may revoke approval of a plan for good cause.

(2) The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons therefor.

(3) Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected group, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

(b) The action may be taken at any time by the director on his or her own motion, on the motion of any of the affected group's employees, or on the motion of the appropriate collective bargaining agent.

(c) However, the director shall review the operation of each qualified employer plan at least once during the twelve-month period that the plan is in effect to assure its compliance with the requirements of these provisions.

(d) Revocation of a plan for good cause by the director shall preclude approval of any subsequent plan submitted by the revoked plan employer during the twelve-month period beginning on the date of the revocation order.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1987, No. 753, § 10; 1991, No. 100, § 39; 2019, No. 910, § 279.

substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1).

Amendments. The 2019 amendment

11-10-608. Modification of an approved plan.

(a) An operational, approved, shared work plan may be modified by the employer with the acquiescence of employee representatives if the modification is not substantial and is in conformity with the plan approved by the Director of the Division of Workforce Services, but the modifications must be reported promptly to the director.

(b)(1) If the hours of work are increased or decreased substantially beyond the level in the original plan or if any other conditions are changed substantially, the director shall approve or disapprove the modifications without changing the expiration date of the original plan.

(2) If the substantial modifications do not meet the requirements for approval, the director shall disallow that portion of the plan in writing as specified in § 11-10-607.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1991, No. 100, § 40; 2019, No. 910, § 280.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

11-10-609. Eligibility for compensation.

(a) An individual is eligible to receive shared work unemployment compensation benefits with respect to any week only if, in addition to monetary entitlement, the Director of the Division of Workforce Services finds that:

(1) During the week, the individual is employed as a member of an affected group under an approved shared work compensation plan that was approved before that week, and the plan is in effect with respect to the week for which the benefits are claimed;

(2)(A) During the week, the individual is able to work and is available for the normal work week with the shared work employer.

(B) However, an otherwise eligible individual shall not be denied benefits with respect to any week in which he or she is in training to enhance job skills, including employer-sponsored training and worker training funded under the Arkansas Workforce Innovation and Opportunity Act, § 15-4-3701 et seq., if the training has been approved by the director.

(b) Notwithstanding any other provisions of this chapter to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to him or her as an employee in an affected group for ninety percent (90%) or less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for the week.

(c) Notwithstanding any other provisions of this chapter to the contrary, an individual shall not be denied shared work unemployment compensation benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the shared work unemployment compensation employer.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 2013, No. 956, § 5; 2015, No. 907, § 2; 2019, No. 910, § 281.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-610. Amount of benefits — Filing of claims.

(a) The shared work unemployment compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount multiplied by the percentage of reduction of at least ten percent (10%) in the individual’s usual weekly hours of work.

(b) An individual may be eligible for shared work unemployment compensation benefits or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for unemployment compensation, nor shall an individual be paid shared work unemployment compensation benefits for more than twenty-five (25) weeks, whether or not consecutive, in any benefit year pursuant to a shared work plan.

(c) The shared work unemployment compensation benefits paid an individual shall be deducted from the maximum entitlement amount established for that individual’s benefit year.

(d) Claims for shared work unemployment compensation benefits shall be filed in the same manner as claims for unemployment compensation or as prescribed in rules by the Director of the Division of Workforce Services.

History. Acts 1985, No. 329, § 1; 1985, No. 813, § 1; A.S.A. 1947, § 81-1104n; Acts 1991, No. 100, § 41; 2011, No. 861, § 6; 2019, No. 315, § 826; 2019, No. 910, § 282.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (d).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (d).

SUBCHAPTER 7 — CONTRIBUTIONS

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Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state’s unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013.”

Acts 2015, No. 690, § 8: July 1, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Depart-

ment of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state’s unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015.”

Acts 2015, No. 892, § 8: Apr. 1, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Arkansas workforce education operates within a variety of agencies without coordination, often with significant inefficiencies arising from overlapping and repeated programming; that this act will bring workforce

education programs together under a single umbrella agency; and that this act is immediately necessary because the effectiveness of this act is essential to the operation of the programs for which appropriations will be provided, and that in the event of an extension of the legislative session, the delay in the effective date of this act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 454, § 3: Mar. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits and the current stabilization tax set aside for the Department of Workforce Services Unemployment Insurance Administration Fund is set to expire on June 30, 2019; that the state's unemployment insurance program must maintain proper authority to process claims for unemployment insurance benefits; and that this act is immediately necessary because a delay would cause a potential service disruption for programs served by the Department of Workforce Services Training Trust Fund and Department of Workforce Services Unemployment Insurance Administration Fund. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 153, § 2, provided: "It is the intent of the General Assembly that the effective date of this act is retroactive to April 4, 2020."

Acts 2021, No. 153, § 3: Feb. 25, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the uncertainty for businesses in Arkansas caused by a disaster emergency has caused a threat to state revenue; that a need exists to allow for the Director of the Division of Workforce Services to modify employer contributions for certain unemployment insurance claims during a disaster emergency; and that this act is immediately necessary because state revenues and businesses in Arkansas will suffer if the Director of the Division of Workforce Services is unable to noncharge employer contributions as a result of a disaster emergency and it is the intent of the General Assembly that this act be retroactive to prevent further harm to businesses and state revenues. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is

overridden, the date the last house overrides the veto.”

Acts 2021, No. 667, § 5, provided: “Retrospectivity. The effective date of this act is retroactive to April 1, 2021.”

Acts 2021, No. 667, § 6: Apr. 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an urgent need to update and modernize the information technology systems for administering unemployment insurance claims and to create and apply an overpayment prevention and recovery process due to a rise in unemployment insurance

fraud claims; that to combat unemployment insurance fraud claims, the Division of Workforce Services will modernize its systems and create and apply an overpayment prevention and recovery process to prevent, detect, and recover unemployment insurance fraud; and that this act is necessary because a failure of the system could deprive Arkansans of the necessary resources to preserve their health and well-being. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on April 1, 2021.”

11-10-701. Accrual and payment by employer.

(a)(1) Contributions shall accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages for employment.

(2) The contributions shall become due and be paid by each employer to the Director of the Division of Workforce Services for the Unemployment Compensation Fund in accordance with such rules as the director may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in employment for the employer.

(b) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent ($\frac{1}{2}\text{¢}$) or more, in which case it shall be increased by one cent (1¢).

(c)(1) Determinations of liability are conclusive and binding unless within thirty (30) calendar days after the mailing date of the determination the employer requests an administrative determination of coverage under § 11-10-308.

(2) However, if the director determines that the request for an administrative determination of coverage is not perfected within the thirty-calendar-day period as a result of circumstances beyond the employer’s control, the director may consider the request as having been filed timely.

History. Acts 1941, No. 391, § 7; 1943, No. 138, § 11; 1963, No. 93, § 9; A.S.A. 1947, § 81-1108; Acts 2015, No. 690, § 3; 2019, No. 315, § 827; 2019, No. 910, § 283.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (a)(2).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(2).

11-10-703. Future rates — Maintenance of separate accounts.

(a)(1)(A) The Director of the Division of Workforce Services shall maintain a separate account for each employer and shall credit the employer’s account with all the contributions paid on the employer’s

own behalf except as otherwise provided in §§ 11-10-701 — 11-10-715.

(B) However, nothing in this chapter shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund either on the employer's behalf or on behalf of such individuals.

(2)(A)(i) Regular benefits paid to an eligible individual based on an initial claim shall be charged to the separate account of each employer in the base period in the proportion to which wages paid by each employer to the individual during the base period bears to total wages paid by all such employers to such individual within the base period.

(ii)(a) However, regular benefits paid to an eligible individual after the individual has established a benefit year against a base-period employer under qualifying conditions and whose employment continued with the employer but who subsequently left the employment under conditions that would have been a noncharge under subdivisions (a)(3) and (4) of this section shall be charged through the date on which the subsequent separation occurred to the separate account of the base-period employer.

(b) Benefits paid from the established benefit year to an individual after the date on which the subsequent separation occurred shall not be charged to the separate account of the base-period employer.

(B) Nothing in §§ 11-10-701 — 11-10-715 shall be construed to limit regular benefits payable pursuant to §§ 11-10-501 — 11-10-506 and 11-10-609 — 11-10-613.

(3) However, regular benefit payments shall not be charged to the separate account of any employer if the employer provides the director with notices regarding separation from work as are required by rules of the director if the director finds that:

(A) The claimant voluntarily left the employer without good cause connected with the work; or

(B) The claimant was discharged by the employer for misconduct connected with the work.

(4) Benefits paid to an individual who continues to remain in the employ of a base-period employer without a reduction in the number of hours worked or wages paid shall not be charged to the separate account of the employer, provided that the individual is not employed on an as-needed or on-call basis.

(5) Benefits paid during an extended benefit period in accordance with §§ 11-10-534 — 11-10-543 shall not be charged to the separate account of each employer in the base period except as may otherwise be provided in §§ 11-10-701 — 11-10-715.

(6) Relief from charges shall not be granted if:

(A) An overpayment of benefits is the result of a failure by an employer or the employer's agent to respond timely or adequately to a request for information from the Division of Workforce Services; and

(B) The employer or the employer's agent has established a pattern of failing to respond to such requests.

(7)(A) At the discretion of the director, benefits paid with respect to weeks of unemployment claimed starting the week ending on April 4, 2020, and after may be noncharged to the separate account of each employer in the base period if the benefits are paid as the direct result of:

(i) The Governor's declaring a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.; or

(ii) A disaster resulting in a state or federal disaster declaration.

(B) In exercising discretion to noncharge employer accounts, the director shall act in a uniform manner with respect to all charges to employers for benefits resulting from a disaster emergency described in subdivision (a)(7)(A)(i) of this section or a state or federal disaster declaration described in subdivision (a)(7)(A)(ii) of this section.

(b) Benefit payments made to any individual whose base-period wages include wages for previously uncovered services as defined in § 11-10-507(5)(C) shall not be charged to the separate account of any employer to the extent that the Unemployment Compensation Fund is reimbursed for the benefits pursuant to section 121 of Pub. L. No. 94-566.

History. Acts 1941, No. 391, § 7; 1949, No. 155, § 8; 1953, No. 162, § 11; 1955, No. 395, § 21; 1963, No. 93, § 9; 1971, No. 35, §§ 11-13; 1973, No. 350, §§ 2, 3; 1975, No. 609, § 6; 1977, No. 376, § 12; 1981, No. 43, § 11; 1983, No. 482, § 26; A.S.A. 1947, § 81-1108; Acts 1995, No. 519, § 8; 1997, No. 234, § 22; 2007, No. 490, § 10; 2013, No. 956, § 6; 2019, No. 315, § 828; 2019, No. 910, §§ 284, 285; 2021, No. 153, § 1.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in the introductory language of (a)(3).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1)(A); and substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(6)(A).

The 2021 amendment added (a)(7).

Effective Dates. Acts 2021, No. 153, § 2, provided: "It is the intent of the General Assembly that the effective date of this act is retroactive to April 4, 2020."

11-10-704. Future rates — Experience rates generally.

(a) The Director of the Division of Workforce Services shall, for each calendar year, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to regular benefits charged against their accounts, with a view to fixing the contribution rates as will reflect their experience.

(b) The director shall determine the contribution rates of each employer in accordance with the requirements of this section and § 11-10-705:

(1) Each employer's rate shall be two and nine-tenths percent (2.9%) except as otherwise provided in the other provisions of this subchapter.

(A)(i) No employer's rate shall be less than two and nine-tenths percent (2.9%) unless and until there shall have been three (3) years immediately preceding the computation date throughout which an individual the employer's employ could have received benefits if eligible. Provided, however, an employer who, at the time of establishing an account, is in business in another state or states and who is not currently doing business in Arkansas may elect to receive a beginning contribution rate of two and nine-tenths percent (2.9%) or a contribution rate based on the rate schedule at § 11-10-705(b)(1), whichever is lower, but in no event less than one percent (1%), provided:

(a) The employer has been in operation in the other state or states for at least three (3) years immediately preceding the date of becoming a liable employer in Arkansas, throughout which an individual in the employer's employ could have received benefits if eligible;

(b) The employer must provide the authenticated account history from information accumulated from operations in the other state or all the other states to compute a current Arkansas rate; and

(c) The employer's business operations established in Arkansas are of the same nature as conducted in the other state or states, as defined by the North American Industry Classification System.

(ii) The election authorized in subdivision (b)(1)(A)(i) of this section must be made in writing within thirty (30) days after receiving notice of Arkansas liability. A two-and-nine-tenths-percent rate will be assigned unless a timely election has been made.

(iii) If the election is made timely, the employer's account will receive the rate elected for the remainder of that rate year. The rate assigned for the next and subsequent years will be determined by the condition of the account on the computation date.

(B) However, any employer having no covered employment under this chapter for any calendar year shall have a rate equal to his or her most recently determined contribution rate until the employer has one (1) full year of benefit risk experience immediately preceding the computation date.

(2)(A) Notwithstanding any other provisions of §§ 11-10-701 — 11-10-715, if the director determines that an employer has willfully submitted false information which is material with respect to the employment or separation from employment of any claimant, employee, or former employee, for the purpose of preventing regular benefit charges to the employer's account, the employer shall be assessed a penalty equivalent to twice the amount of the claimant's maximum potential benefit amount.

(B) This charge shall be charged against the employer's account for experience rating purposes, regardless of whether or not the employer is a base-period employer and irrespective of the identity or number of base-period employers.

(3) An employer who changes from reimbursement to the contributory method of financing shall be considered a new or newly covered

employer and can be entitled to an experience rate only when the new or newly covered employer has met the requirements of this subsection.

(4) Each employer’s rate beginning January 1 for each twelve-month period shall be determined on the basis of the employer’s record through June 30 of the previous calendar year.

History. Acts 1941, No. 391, § 7; 1943, No. 135, § 1; 1947, No. 398, § 6; 1955, No. 395, § 22; 1957, No. 133, § 1; 1963, No. 93, § 9; 1971, No. 35, § 11; 1973, No. 329, §§ 10, 11; 1973, No. 350, §§ 2, 3; 1975, No. 609, § 6; A.S.A. 1947, § 81-1108; Acts

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a).

11-10-705. Future rates — Computation of contribution rates.

(a)(1) Each employer’s contribution rate beginning January 1 for each twelve-month period shall be determined on the basis of the employer’s record through June 30 of the previous calendar year.

(2) The record of an employer shall include, for the purpose of computing an employer’s contribution rate, any payment, except a payment that represents a stabilization tax payment or a payment that represents an extended benefit tax payment, made by the employer on or before July 31 on wages paid by the employer on or before June 30 of the calendar year.

(b)(1)(A) The contribution rate of an employer who has had three (3) or more years of benefit risk as defined at § 11-10-707 shall be that shown on the corresponding line that reflects the employer’s reserve ratio in the contribution rate schedule which follows.

(B) The reserve ratio in the following schedule is determined by dividing the difference in contributions paid and regular benefits charged by the annual taxable payroll:

CONTRIBUTION RATE	RESERVE RATIO
0.1%	9.95% or more
0.3%	9.35% but less than 9.95%
0.5%	8.85% but less than 9.35%
0.8%	8.65% but less than 8.85%
1.2%	8.35% but less than 8.65%
1.6%	7.95% but less than 8.35%
2.0%	7.35% but less than 7.95%
2.4%	6.75% but less than 7.35%
2.8%	5.45% but less than 6.75%
3.2%	2.45% but less than 5.45%
4.0%	1.35% but less than 2.45%
5.0%	Less than 1.35% with a positive reserve balance
6.0%	Less than 0.00%

(2)(A) Notwithstanding any other provision of this chapter, for any calendar year beginning on and after January 1, 2008, an employer that has been assigned a contribution rate of six percent (6%) under this chapter and that has had such a rate for the two (2) preceding calendar years will be assigned an additional contribution assessment of two percent (2%).

(B) After two (2) consecutive years of being assessed an additional contribution of two percent (2%) under subdivision (b)(2)(A) of this section, this additional contribution assessment shall increase to four percent (4%).

(C) For calendar years beginning January 1, 2014, and thereafter, after two (2) consecutive years of being assessed an additional contribution of four percent (4%) under subdivision (b)(2)(B) of this section, the additional contribution assessment shall increase to six percent (6%).

(D) For calendar years beginning January 1, 2014, and thereafter, after two (2) consecutive years of being assessed an additional contribution of six percent (6%) under subdivision (b)(2)(C) of this section, the additional contribution assessment shall increase to eight percent (8%).

(c)(1)(A) Notwithstanding any other provisions of this chapter and unless prohibited by § 11-10-723(c)(1), an employer that has been assigned a contribution rate pursuant to this chapter may make a voluntary payment to the Unemployment Compensation Trust Fund Account, in addition to the contributions required pursuant to this chapter, to be credited to the employer's account.

(B) The Director of the Division of Workforce Services shall provide to each eligible employer an annual notice of voluntary payment amounts that may be submitted to reduce the employer's contribution rate.

(2)(A)(i) Voluntary payments to the fund account under subdivision (c)(1) of this section shall be made no later than March 31 of the calendar year for which the new contribution rate is effective.

(ii) Upon receipt of a timely voluntary payment, the director shall compute a new contribution rate for the employer and provide notice to the employer of the new contribution rate.

(B) Any adjustments made under §§ 11-10-703 — 11-10-708 shall be used only in the form of credit against accrued or future contributions.

(C) No refund shall ever be made to any employer of any voluntary payment so made.

History. Acts 1941, No. 391, § 7; 1947, No. 398, § 6; 1949, No. 155, § 10; 1953, No. 162, § 12; 1955, No. 395, § 23; 1959, No. 142, § 1A; 1963, No. 93, § 9; 1971, No. 35, §§ 11-13; 1981, No. 43, § 12; 1983, No. 482, § 27; A.S.A. 1947, § 81-1108; Acts 1989, No. 420, §§ 8, 9; 1991, No. 48, § 7; 1997, No. 234, § 23; 1999, No. 1055, § 1; 2001, No. 964, § 1; 2001, No. 1367, § 9; 2005, No. 902, § 9; 2007, No. 490, § 11; 2013, No. 1191, § 1; 2015, No. 1153, § 1; 2019, No. 910, § 287.

Amendments. The 2019 amendment substituted "Director of the Division of

Workforce Services" for "Director of the Department of Workforce Services" in (c)(1)(B).

11-10-706. Future rates — Stabilization tax.

(a)(1) Each employer shall be required to pay a stabilization tax on wages paid by the employer with respect to employment.

(2) This stabilization tax shall not be credited to the separate account of each employer.

(b) The stabilization tax shall be determined as follows:

(1) If the assets of the Unemployment Compensation Fund on the computation date are equal to or greater than two percent (2%) but less than two and one-half percent (2.5%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be one-tenth of one percent (0.1%);

(2) If the assets of the Unemployment Compensation Fund on the computation date are greater than one and one-half percent (1.5%) but less than two percent (2%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be two-tenths of one percent (0.2%);

(3) If the assets of the Unemployment Compensation Fund on the computation date are greater than one percent (1%) but less than one and one-half percent (1.5%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be three-tenths of one percent (0.3%);

(4) If the assets of the Unemployment Compensation Fund on the computation date are greater than one-half of one percent (0.5%) but less than one percent (1%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be four-tenths of one percent (0.4%);

(5) If the assets of the Unemployment Compensation Fund on the computation date are less than one-half of one percent (0.5%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be seven-tenths of one percent (0.7%);

(6) If the assets of the Unemployment Compensation Fund on the computation date are less than four-tenths of one percent (0.4%) of total payrolls for employment during the preceding calendar year, the stabilization tax shall be one and one-tenth percent (1.1%) for the calendar year 1993, nine-tenths of one percent (0.9%) for the calendar year 1994, and eight-tenths of one percent (0.8%) for the calendar year 1995 and thereafter; and

(7) For the rate year beginning January 1, 2022, and ending December 31, 2022, the stabilization tax shall be the lesser of:

(A) The amount determined according to subdivisions (b)(1)-(6) of this section; or

(B) Two-tenths of one percent (0.2%).

(c) Each employer eligible for an experience rating under § 11-10-705 shall have the employer's contribution rate reduced by one-tenth of

one percent (0.1%) for any rate year when the assets of the Unemployment Compensation Fund on the computation date are greater than five percent (5%) of total payrolls for employment during the preceding calendar year.

(d) Employers who have elected to reimburse the Unemployment Compensation Fund in lieu of contributions under § 11-10-404 or § 11-10-713 shall be excluded from the provisions of §§ 11-10-703 — 11-10-708 or any experience rate computation.

(e)(1) The provisions of this section shall not be effective for any rate year when the assets of the Unemployment Compensation Fund, excluding contributions not yet paid, on the computation date equal or exceed two and one-half percent (2.5%) but are less than five percent (5%) of total payrolls for employment during the preceding calendar year.

(2) For the purposes of §§ 11-10-703 — 11-10-708, total payrolls shall exclude payrolls of employers who have elected to reimburse the Unemployment Compensation Fund in lieu of contributions under § 11-10-404 or § 11-10-713.

(3)(A) For the purposes of §§ 11-10-703 — 11-10-708, the assets of the Unemployment Compensation Fund as of the computation date shall include only contributions which were paid on or before June 30, the computation date.

(B) Provided, however, for the purposes of this section, the computation date is defined as September 30 of the calendar year preceding the tax year.

(C) It shall include any accounts receivable from the United States for its share of extended benefit payments which have been paid from the Unemployment Compensation Fund and any accounts receivable from employers who have elected to reimburse the Unemployment Compensation Fund for benefits paid under § 11-10-404 or § 11-10-713.

(D) However, it shall exclude the assets of the Unemployment Compensation Fund Extended Benefits Account and shall be reduced by any outstanding advances owed to the United States Government.

(f)(1)(A) However, the proceeds of the stabilization tax in the amount of two and one-half hundredths of one percent (0.025%) of taxable wages collected during the period July 1, 2007, through June 30, 2023, shall be deposited and credited to the Division of Workforce Services Training Trust Fund, there to be used for worker training.

(B) The total amount deposited into the Division of Workforce Services Training Trust Fund in any one (1) fiscal year shall not exceed two million five hundred thousand dollars (\$2,500,000).

(2)(A) However, the proceeds of the stabilization tax in the amount of two and one-half hundredths of one percent (0.025%) of taxable wages collected during the period July 1, 2007, through June 30, 2023, shall be deposited and credited to the Division of Workforce Services Unemployment Insurance Administration Fund, there to be used for personal services and operating expenses of the unemploy-

ment insurance program necessary for the proper administration of the Division of Workforce Services Law, § 11-10-101 et seq., as determined by the Director of the Division of Workforce Services.

(B)(i) The total amount deposited into the Division of Workforce Services Unemployment Insurance Administration Fund in any one (1) fiscal year shall not exceed two million five hundred thousand dollars (\$2,500,000).

(ii) If the amount deposited into the Division of Workforce Services Unemployment Insurance Administration Fund under subdivision (f)(2)(B)(i) of this section is not sufficient to meet the administrative needs under the Division of Workforce Services Law, § 11-10-101 et seq., the Division of Workforce Services may deposit up to an additional three million five hundred thousand dollars (\$3,500,000) in any one (1) fiscal year to the Division of Workforce Services Unemployment Insurance Administration Fund upon approval by the Chief Fiscal Officer of the State.

(C)(i) However, after collection of the proceeds of the stabilization tax specified in subdivisions (f)(2)(A) and (B) of this section, the proceeds of the stabilization tax in an additional amount of fifteen-hundredths of one percent (0.15%) of taxable wages collected during the period April 1, 2021, through December 31, 2023, shall be deposited and credited to the Division of Workforce Services Unemployment Insurance Administration Fund, there to be used solely for the purpose of modernizing information technology systems and hardware utilized in the administration of the unemployment insurance program.

(ii) The aggregate amount to be transferred into the Division of Workforce Services Unemployment Insurance Administration Fund under this subdivision (f)(2)(C) shall not exceed thirty-five million dollars (\$35,000,000) and shall be reduced by the amount, if any, received from the United States Government for the purpose of modernizing information technology systems and hardware utilized in the administration of the unemployment insurance program.

(3) The director shall report to the Legislative Council on a quarterly basis as to any and all uses of the Division of Workforce Services Training Trust Fund and the Division of Workforce Services Unemployment Insurance Administration Fund.

History. Acts 1941, No. 391, § 7; 1963, No. 93, § 9; 1971, No. 35, § 12; 1973, No. 329, §§ 10, 11; 1975, No. 609, § 6; 1975 (Extended Sess., 1976), No. 1083, § 8; 1981, No. 43, §§ 11-13; 1983, No. 482, § 27; 1985, No. 8, § 8; 1985, No. 9, § 8; A.S.A. 1947, § 81-1108; reen. Acts 1987, No. 672, § 7; Acts 1989, No. 420, § 10; 1991, No. 48, § 8; 1993, No. 6, §§ 13, 14; 1997, No. 234, § 24; 2001, No. 1628, § 1; 2007, No. 551, § 3; 2011, No. 1040, § 4; 2015, No. 690, §§ 4, 5; 2015, No. 892,

§§ 2, 3; 2017, No. 540, § 11; 2017, No. 1038, § 1; 2019, No. 454, §§ 1, 2; 2019, No. 910, § 288; 2021, No. 369, § 1; 2021, No. 667, § 2.

A.C.R.C. Notes. Acts 2015, No. 892, § 1, provided: "Findings. The General Assembly finds that:

"(1) Occupational, technical, and industrial training provides unique opportunities to improve the lives of Arkansans while advancing the state's economic development;

"(2) Businesses seeking to begin operations in Arkansas look to the level of education and skills in the workforce as a key factor in making investment decisions;

"(3) Currently, Arkansas workforce education proceeds in a variety of agencies, without coordination, often with significant inefficiencies arising from overlapping and repeated programming and from important programs being overlooked as presumably covered by another program; and

"(4) Bringing coordination of all state and federal career education and workforce development programs will:

"(A) Reduce duplication of programming;

"(B) Ensure that every Arkansan who seeks occupational, technical, and industrial training will find an appropriate education program in this state;

"(C) Bring consistency and efficiency to the state's career education and workforce development efforts; and

"(D) Alert industry to the commitment of the State of Arkansas to economic de-

velopment through career education and workforce education."

Amendments. The 2017 amendment by No. 540 deleted "the State Employment Security Advisory Council and" preceding "the Legislative Council" in (f)(3).

The 2017 amendment by No. 1038 inserted "personal services and" in (f)(2)(A); redesignated former (f)(2)(B) as (f)(2)(B)(i); and added (f)(2)(B)(ii).

The 2019 amendment by No. 454 substituted "June 30, 2023" for "June 30, 2019" in (f)(1)(A) and (f)(2)(A).

The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" throughout (f).

The 2021 amendment by No. 369 added (b)(7).

The 2021 amendment by No. 667 added (f)(2)(C).

Effective Dates. Acts 2021, No. 667, § 5, provided: "Retroactivity. The effective date of this act is retroactive to April 1, 2021."

11-10-707. Future rates — Definitions — Notifications.

(a)(1) As used in §§ 11-10-701 — 11-10-715:

(A) The term "annual payroll" means the total amount of taxable wages paid during a calendar year by an employer for employment and for the employer who has had three (3) or more years of benefit risk experience; and

(B) The term "average annual payroll" means the average of the annual payrolls for the last three (3) or the five (5) preceding calendar years, whichever is the lesser.

(2)(A) However, with respect to rate years beginning January 1, 1972, and thereafter, an employer who has been subject to three (3) or more years of benefit risk may voluntarily elect to be rated each year on the basis of total taxable wages paid during the preceding calendar year instead of the average of the annual payrolls for the last three (3) or last five (5) preceding calendar years, whichever is the lesser.

(B) A voluntary election by an employer shall be made at the time and in the manner prescribed by rules of the Director of the Division of Workforce Services.

(C) Any voluntary election so made shall be irrevocable, except with respect to an employer who acquires the experience of the electing employer under the provision of § 11-10-710.

(b) The director shall for each rate year:

(1)(A)(i) Periodically notify each employer of the regular benefits paid that are chargeable to the employer's account.

(ii) The notification shall become conclusive and binding upon the employer unless within thirty (30) days after mailing of the notice the employer files an application for review and redetermination as provided in subdivision (c)(1) of this section.

(B)(i) With the exception of charges that might be changed under § 11-10-703(a)(2)(A)(ii), an application for review and redetermination shall be made the first time that charges appear on the employer's account as reflected on the quarterly statement of paid benefits.

(ii) Subsequent charges on the same claimant in the same benefit year may not be challenged; and

(2) Notify each employer of the employer's rate of contribution as determined pursuant to §§ 11-10-701 — 11-10-715.

(c)(1)(A) The notice shall contain the contribution rate, and if the employer is eligible for an experience rating, the factors used in determining the individual employer's experience rate, together with any other information the director may think necessary.

(B)(i) The determination of the director, including all the figures shown on the notice or notices issued under this subdivision (c)(1), shall become conclusive and binding upon the employer unless within thirty (30) days after the mailing of the notice or notices thereof to the employer's last known post office address, the employer files an application for review and redetermination setting forth the employer's reasons therefor.

(ii) The director may, if he or she finds the reasons set forth by the employer insufficient to change the benefit charges to the employer's account or the rate of contributions, deny the application; otherwise, it shall be granted and the charges adjusted and the rate redetermined.

(C) The employer shall be promptly notified by mailing to the employer's last known address the denial of the employer's application or of the redetermination, both of which shall become final and conclusive at the date of mailing of notification thereof.

(2) An employer may appeal from the determination of the director to the circuit court by filing a petition with the clerk of the circuit court in the county of the employer's residence or in the Pulaski County Circuit Court within thirty (30) days of the mailing to the employer of notice of the determination.

(d) As used in §§ 11-10-703 — 11-10-708, an employer's "year of benefit risk" means a twelve-month period ending on June 30 throughout which any individual in the employer's employ could have received benefits chargeable to the employer's account.

History. Acts 1941, No. 391, § 7; 1943, § 9; A.S.A. 1947, § 81-1108; Acts 1989, No. 138, § 13; 1947, No. 398, § 6; 1949, No. 420, § 11; 1993, No. 6, § 15; 2001, No. 155, § 10; 1953, No. 162, § 13; 1955, 1367, § 10; 2007, No. 490, §§ 12, 13; No. 395, § 24; 1963, No. 93, § 9; 1971, No. 2019, No. 315, § 829; 2019, No. 910, § 35, §§ 11-13; 1985, No. 8, § 9; 1985, No. 9, 289.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(2)(B). force Services” for “Director of the Department of Workforce Services” in (a)(2)(B).

The 2019 amendment by No. 910 substituted “Director of the Division of Work-

11-10-708. Future rates — Advance interest tax.

(a)(1)(A) In addition to the contributions and any stabilization and extended benefits taxes levied under other provisions of §§ 11-10-703 — 11-10-708, each employer, except employers that have made an election to reimburse the Unemployment Compensation Fund under § 11-10-713(c), shall pay a separate and additional tax, to be known as the advance interest tax, on wages paid by that employer with respect to employment.

(B) For rate years beginning on and after January 1, 1993, the advance interest tax shall be two-tenths of one percent (0.2%) when the state has an outstanding interest-bearing advance under Title XII of the Social Security Act.

(C) The tax is effective the first month of the quarter following the state’s obtaining an interest-bearing advance and shall remain until the quarter immediately following the repayment of the advance—ment and the Employment Security Advance Interest Trust Fund, § 19-5-935, attains a balance of five million dollars (\$5,000,000).

(2) For purposes of this section, the definition of the assets of the trust fund shall be the same as that set forth in § 11-10-706, and the computation date is defined as September 30 of the calendar year preceding the tax year.

(3) This advance interest tax shall not be credited to the separate account of any employer. It shall be levied and collected in the same manner as contributions and shall be subject to the same penalty and interest, collection, impoundment, priority, lien, certificate of assessment, and assessment provisions and procedures set forth in §§ 11-10-716 — 11-10-722.

(b)(1) Receipts from this advance interest tax and any penalty and interest collected on overdue advance interest taxes shall be deposited into the Unemployment Compensation Fund Clearing Account.

(2) At least once each month, deposits that have been established as advance interest tax payments and any interest and penalty payments applicable to the advance interest payments shall be paid over to the Treasurer of State and credited by the Treasurer of State to the Employment Security Advance Interest Trust Fund created and established in the State Treasury.

(3) All income from investment of the Employment Security Advance Interest Trust Fund shall be deposited and credited to that Employment Security Advance Interest Trust Fund.

(4) All withdrawals shall be upon voucher warrants issued, or caused to be issued, by the Director of the Division of Workforce Services as authorized by legislative appropriation and, except as otherwise provided herein, shall be used only for the purpose of:

(A) Paying interest incurred by the state on advances obtained from the federal Unemployment Trust Fund under Title XII of the Social Security Act;

(B) Making refunds of the aforementioned advance interest tax and interest and penalty payments attributed to the advance interest tax which were erroneously paid; and

(C) Returning moneys to the Unemployment Compensation Fund Clearing Account that may have been incorrectly identified and erroneously transferred to the Employment Security Advance Interest Trust Fund in the State Treasury.

(c)(1) On November 10 of each calendar year, the director shall transfer all assets of the Employment Security Advance Interest Trust Fund, which exceed five million dollars (\$5,000,000) to the Unemployment Compensation Fund, § 11-10-801, provided that the state has no interest-bearing advances obtained from the federal Unemployment Trust Fund under Title XII of the Social Security Act outstanding.

(2) [Repealed.]

(d) Any interest required to be paid on advances obtained by the state under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid directly or indirectly by an equivalent reduction in unemployment contributions or taxes imposed under other provisions of §§ 11-10-701 — 11-10-715 or otherwise from amounts in the Unemployment Compensation Fund established under § 11-10-801 et seq.

(e) The director shall promulgate such rules as are necessary to carry out the provisions of this section.

History. Acts 1941, No. 391, § 7; 1963, No. 93, § 9; 1971, No. 35, §§ 11-13; 1973, No. 329, §§ 10, 11; 1973, No. 350, §§ 2, 3; 1983, No. 482, § 29; 1985, No. 8, § 10; 1985, No. 9, § 10; A.S.A. 1947, § 81-1108; Acts 1991, No. 100, § 42; 1993, No. 6, § 16; 1995, No. 519, § 9; 2019, No. 315, § 830; 2019, No. 910, §§ 290, 291.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (e).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (b)(4); and repealed (c)(2).

11-10-710. Transfer of experience.

(a)(1) Unless otherwise provided in § 11-10-723, any employing unit that acquires the organization, trade, and all of the places of business and substantially all of the assets of any employer, excepting, in any such case, any assets retained by the employer incident to the liquidation of the employer’s obligations, whether or not the acquiring employing unit was an employing unit within the meaning of § 11-10-208 prior to the acquisition, and that continues the organization, trade, or business as indicated by retaining the predecessor employer’s three-digit North American Industry Classification System code shall assume the predecessor employer’s actual contributions, regular benefit experience, annual payrolls, liability for current or delinquent contributions, interest, penalty, and otherwise as if no change with respect to

the separate account, actual experience, and payrolls or the position of the predecessor employer otherwise had occurred and as if the operations of the predecessor employer had at all times been carried on by the successor employing unit.

(2) The separate account of the predecessor employer shall be transferred by the Director of the Division of Workforce Services to the successor employing unit and, as of the date of the acquisition, shall become the separate account or part of the separate account, as the case may be, of the successor employing unit, and the regular benefits thereafter chargeable to the predecessor employer on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit.

(b)(1) However, unless otherwise provided in § 11-10-723, if any employing unit acquires a segregable and identifiable portion of the business of any employer, whether the acquiring employing unit was an employing unit within the meaning of § 11-10-208 prior to the acquisition, and whether the acquisition is the result of reorganization, purchase, inheritance, receivership, or for any other cause, and if the successor employing unit desires to obtain any benefit of the predecessor employer's experience, the successor employing unit must file with the director a petition, signed by all interested parties, within thirty (30) days after the acquisition setting out the percentage of the predecessor employer's actual contributions, regular benefit experience, annual payrolls, payment of contributions, and otherwise that should be transferred to the successor employing unit's separate account.

(2)(A) If the director finds the facts substantially as represented in the petition and that all contributions due by the successor employing unit have been paid, he or she shall transfer the proportionate share of the predecessor employer's separate account to the successor employing unit.

(B) Effective the date of the acquisition, the account transferred under subdivision (b)(2)(A) of this section shall become the separate account or part of the separate account, as the case may be, of the successor employing unit as if no change with respect to the proportionate share of the separate account had occurred.

(c)(1) Following a transfer as described in subsection (a) or subsection (b) of this section, the contribution rate of the successor employing unit shall be determined as follows:

(A) If the successor employing unit is an employer as defined in § 11-10-209 at the time of the transfer and has been assigned a contribution rate under this section, the successor employing unit shall continue to pay contributions at the previously assigned contribution rate through the end of the rate year;

(B) If the successor employing unit is not an employer as defined in § 11-10-209 at the time of the transfer and acquires the business of one (1) employer or the businesses of two (2) or more employers with the same contribution rate, the successor employing unit shall pay contributions at the contribution rate assigned to the predecessor

employer or employers from the date the transfer occurred through the end of the rate year; and

(C) If the successor employing unit is not an employer as defined in § 11-10-209 at the time of the transfer and simultaneously acquires the businesses of two (2) or more employers with different rates of contributions, the successor employing unit's contribution rate from the date the transfer occurred through the end of the rate year shall be computed on the combined experience of the predecessor employers as of the regular computation date for the rate year in which the transfer occurred.

(2)(A) From and after the end of the rate year in which the transfer occurred, the successor employing unit's rate of contribution for each rate year following the transfer shall be based on the successor employing unit's experience combined with the experience of the predecessor employer or employers as of the regular computation date for the rate year.

(B) However, if at the regular computation date the successor employing unit and the predecessor employer or employers have less than three (3) years of benefit risk as defined in § 11-10-707(d):

(i) The contribution rate shall be the new employer contribution rate as set forth in § 11-10-704(b)(1); and

(ii) The three (3) years of benefit risk shall be calculated using the established new employer calculation date of the successor employing unit or the calculation date of the predecessor employer or employers, whichever date is the earliest.

(d)(1)(A) The director shall give notice of the determination he or she makes under subsection (a) or subsection (b) of this section to the predecessor employer unless the predecessor employer has consented to the transfer of experience and to the successor employing unit.

(B) The notice shall become conclusive and binding upon each employing unit unless, within twenty (20) days after the mailing date of the notice to the employing unit's last known mailing address, an application for review and redetermination is filed with the director setting forth the employing unit's reasons for seeking a review and redetermination.

(2)(A)(i)(a) The director may deny the application if he or she finds the reasons set forth by the employing unit making application for review and redetermination are insufficient to change his or her determination.

(b) Otherwise, the application for review and redetermination shall be granted, and the director shall make a redetermination.

(ii) The director may issue a redetermination within one (1) year of the original determination if, through his or her own investigation, he or she finds the original determination to be in error.

(B) The director shall promptly notify the parties to the review and redetermination of his or her decision by mailing the denial of redetermination to their last known addresses.

(C) The denial of an application for review and redetermination is final and conclusive as of the mailing date of the director's notification.

(3) A party to a review and redetermination under subdivision (d)(2) of this section may appeal from the determination or redetermination of the director by filing a petition with the clerk of the circuit court in the county of the party's residence, if the residence is in Arkansas, or the clerk of the Pulaski County Circuit Court, Arkansas, within thirty (30) days of the mailing date of the director's notice of determination or redetermination.

History. Acts 1941, No. 391, § 7; 1943, No. 256, § 1; 1945, No. 8, § 1; 1947, No. 398, § 7; 1949, No. 155, § 11; 1953, No. 162, § 14; 1955, No. 395, § 26; 1959, No. 32, § 1; 1963, No. 93, § 9; 1971, No. 35, § 14; 1985, No. 8, § 11; 1985, No. 9, § 11; A.S.A. 1947, § 81-1108; Acts 1991, No. 48, § 9; 1991, No. 100, § 43; 2003, No. 1223, § 12; 2005, No. 902, § 10; 2007, No. 490, § 14; 2013, No. 1128, § 2; 2019, No. 910, § 292.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(2).

11-10-711. Temporary closing of business because of absence in armed forces.

(a) Notwithstanding any inconsistent provisions of this chapter, if the Director of the Division of Workforce Services finds that an employer's business was closed solely because of the entrance of one (1) or more of the owners, officers, partners, or the majority stockholder into the armed forces of the United States or any of its allies, or of the United Nations, or into state active duty with the Arkansas National Guard, the employer's account shall, for experience rating purposes, not be considered as terminated. If the business is resumed by the employer within one (1) year after the discharge or release of the person from active duty in the armed forces or from state active duty with the Arkansas National Guard, the employer's experience shall be deemed to have been continuous through the closed period.

(b) The employer's reserve ratio after returning from military duty shall be the ratio of the employer's reserve, including regular benefits paid to any individual during the period the employer was in the armed forces, to the average of the employer's annual payrolls for the three (3) or five (5) most recent calendar years for which the employer has reported taxable wages, whichever average is the lesser.

(c) However, succession provisions shall apply to this account only if the business has been resumed by the employer.

History. Acts 1941, No. 391, § 7; 1943, No. 135, § 1; 1943, No. 138, §§ 11-13; 1943, No. 256, § 1; 1945, No. 8, § 1; 1947, No. 398, §§ 6, 7; 1949, No. 155, §§ 8-11; 1953, No. 162, § 15; 1963, No. 93, § 9; 1971, No. 35, § 14; A.S.A. 1947, § 81-1108; Acts 2019, No. 462, § 10; 2019, No. 910, § 293.

Amendments. The 2019 amendment by No. 462, in (a), deleted "after December 31, 1949" following "United Nations", inserted "or into state active duty with the

Arkansas National Guard", and inserted "or from state active duty with the Arkansas National Guard".

The 2019 amendment by No. 910 substituted "Director of the Division of Work-

force Services" for "Director of the Department of Workforce Services" in the first sentence of (a).

11-10-712. Employer ceasing to pay wages.

(a) Whenever an employer has paid no wages for a period of twelve (12) consecutive calendar quarters following the latest calendar quarter that the employer paid wages in employment, the Director of the Division of Workforce Services shall terminate the employer's experience rating account and shall destroy the records of the account.

(b) In the event an employer subsequently becomes subject to this chapter after the employer's experience rating account has been so terminated, the employer must again meet the requirements of §§ 11-10-703 — 11-10-708.

History. Acts 1941, No. 391, § 7; 1959, No. 238, § 1; 1963, No. 93, § 9; 1971, No. 35, § 14; 1983, No. 482, §§ 25-30; A.S.A. 1947, § 81-1108; Acts 2019, No. 910, § 294.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

11-10-713. Employees of nonprofit organizations and governmental entities — Definitions.

(a) Benefits paid to individuals based on wages paid by any nonprofit organization or government employing unit shall be financed in accordance with this section.

(b) As used in this section and § 11-10-714:

(1) A "government employing unit" is one for which service in employment as defined in § 11-10-210(a)(2) is performed;

(2) A "nonprofit organization" is an organization for which service in employment as defined in § 11-10-210(a)(3) is performed and which is exempt from income tax under section 501(a) of the Internal Revenue Code of 1954; and

(3) "Wages" are not limited by any amount specified in § 11-10-215.

(c)(1) Any nonprofit organization or government employing unit which, pursuant to § 11-10-210(a)(2) or (a)(3), is subject to this chapter shall pay contributions under § 11-10-701 unless it elects, in accordance with this subsection, to pay to the Director of the Division of Workforce Services for the Unemployment Compensation Fund an amount equal to the amount of regular benefits and, to the extent that the fund is not reimbursed for the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, the extended benefits paid, based on wages paid by the employer to individuals for weeks of unemployment that begin during the effective period of the election.

(2) Any nonprofit organization or government employing unit that is or becomes subject to this chapter may elect to become liable for

payments in lieu of contributions for a period of not less than one (1) calendar year, provided that it files with the director a written notice of its election within the thirty-day period immediately following the date it becomes subject to this chapter.

(3) Any nonprofit organization or any government employing unit that makes an election in accordance with subdivision (c)(2) of this section shall continue to be liable for payments in lieu of contributions until it files with the director a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which the termination shall first be effective.

(4)(A) Any nonprofit organization or any government employing unit that has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the director not later than thirty (30) days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions.

(B) The election shall not be terminable by the employer for that and the next calendar year.

(5)(A) The director may, for good cause, extend the period within which a notice of election, or a notice of termination, must be filed.

(B) He or she may permit an election to be retroactive for a period not to begin earlier than the first day of the current calendar year.

(6)(A) The director, in accordance with such rules as he or she may prescribe, shall notify each employer filing an election notice of any determination that he or she may make under this section and of the effective date or the termination date of the election.

(B) The determinations shall be subject to reconsideration, appeal, and review in accordance with § 11-10-308.

(7) Any nonprofit organization or any government employing unit that elects to make payments in lieu of contributions into the fund as provided in this subsection shall not be liable to make payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 11-10-507(5)(C) to the extent that the fund is reimbursed for benefits pursuant to section 121 of Pub. L. No. 94-566.

(d)(1) At the end of each calendar quarter, the director shall, except as otherwise may be provided in subsection (e) of this section, bill each employer that has elected to make payments in lieu of contributions for an amount equal to the full amount of the regular benefits and, to the extent that the fund is not reimbursed for the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 the extended benefits paid to individuals during the calendar quarter that are based on wages paid by the employer.

(2)(A) The amount due specified in any bill from the director shall be conclusive and binding on the employer unless, not later than thirty (30) days after the bill was mailed to the employer's last known address or was otherwise delivered, the employer files an application for redetermination by the director.

(B) The director shall promptly review and reconsider the amount due specified in the bill and shall issue a redetermination in any case in which the application for redetermination has been filed.

(C) Any redetermination shall be conclusive and binding unless, not later than thirty (30) days after the redetermination was mailed to the employer's last known address or was otherwise delivered, the employer appeals the redetermination of the director by filing a petition with the clerk of the circuit court in the county of the employer's residence, if the residence is in Arkansas, or the clerk of the Pulaski County Circuit Court, Arkansas.

(3) Payment of any bill rendered under subdivision (d)(1) of this section shall be made not later than thirty (30) days after the bill was mailed to the last known address of the employer or was otherwise delivered to the employer unless there has been an application for review and redetermination in accordance with subdivision (d)(2) of this section.

(4) Payments made by any employer under this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the employer.

(5)(A) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to §§ 11-10-716 — 11-10-722, apply to past due contributions.

(B) Also, unpaid amounts in lieu of contributions are subject to the same assessment and civil action and other collection provisions of this chapter as apply to unpaid contributions.

(C) Furthermore, the provisions of this chapter which provide for the adjustment or refund of contributions shall apply to the adjustment or refund of payments in lieu of contributions.

(D) Any goods, chattels, moneys, or credits belonging to a private nonprofit employer or political subdivision of this state or any instrumentality of one (1) or more states or political subdivisions and that are in the hands or possession of the State of Arkansas shall be subject to levy or garnishment as provided by law for the satisfaction of any past due payments in lieu of contributions of the employer.

(6) Relief from billing shall not be granted if:

(A) An overpayment of benefits is the result of a failure by an employer or the employer's agent to respond timely or adequately to a request for information from the Division of Workforce Services; and

(B) The employer or the employer's agent has established a pattern of failing to respond to such requests.

(e) Payments in lieu of contributions shall be made in accordance with the following provisions:

(1)(A) Each state government employing unit for which services as defined in § 11-10-210(a)(2)(A) are performed and that is liable for payments in lieu of contributions shall, at the end of each calendar quarter, pay to the director an amount equal to the full amount of regular benefits, and to the extent that the fund is not reimbursed for

the extended benefits in accordance with section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, the extended benefits paid to individuals based on wages paid by the state government employing unit regardless of the source of funds from which the wages are paid.

(B) The benefits shall be financed by appropriation of funds by the General Assembly.

(C) The division shall bill and the Chief Fiscal Officer of the State shall promptly reimburse the division for such benefit payments in accordance with subsection (d) of this section; and

(2)(A)(i) Each private nonprofit employer and each government employing unit for which services as defined in § 11-10-210(a)(2)(B) are performed and that has elected to make payment in lieu of contributions shall, for calendar quarters beginning on and after January 1, 1979, pay such amount as the employer may estimate to be the amount of regular benefits and one-half ($\frac{1}{2}$) of the extended benefits, except that government employing units shall include all of the extended benefits expected to be paid to individuals based on wages paid by the employer during the period.

(ii)(a) The payments shall be made on or before the tenth day of the first month of each calendar quarter.

(b) The percentage used to determine the amount of quarterly payment due under this subdivision (e)(2) shall be determined by the director and shall be based on the average quarterly benefit cost of each employer during the fiscal year ending on June 30 of the immediately preceding calendar year.

(c) If any employer subject to this subdivision (e)(2) did not have wages in an immediately preceding fiscal year, the director shall determine the average quarterly wages to be used in determining the amount of quarterly payment to be made in the current year by the employer. The determination shall be based on that portion of the fiscal year during which wages were paid.

(B) On December 31 of each calendar year or as soon thereafter as possible, the director shall determine whether the total amount of payments made for the year by the employer is less than or in excess of the total amount of benefit payments chargeable to the employer under this section. Each employer whose total payments for the year were less than the amount so determined shall be liable for payment of the unpaid balance and shall pay the amount due within thirty (30) days after the date on which the director shall mail to the employer a notice of the amount. If the total payment exceeds the amount so determined for the calendar year, all or a part of the excess may, at the option of the employer, be refunded to the employer or retained as part payment against future payments.

(C) If benefits paid to an individual are based on wages paid by one (1) or more employers that are liable for payments in lieu of contributions and on wages paid by one (1) or more employers who are liable for contributions or by two (2) or more employers that are

liable for payments in lieu of contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bears to the total base-period wages paid to the individual by all of his or her base-period employers.

(f) If any employer is delinquent in making any payments in lieu of contributions as required under this section, the director may terminate the employer's election to make payments in lieu of contributions as of the beginning of the next calendar year, and the termination shall be effective for that and the next calendar year.

(g)(1)(A) Two (2) or more employers that have become liable for payments in lieu of contributions in accordance with subsection (c) of this section may file a joint application to the director for the establishment of a group account for the purpose of sharing the cost of benefits that are attributable to service in the employ of the employers.

(B) Each application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection.

(2) Upon his or her approval of the application, the director shall establish a group account for the employers effective as of the beginning of the calendar quarter in which he or she receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than one (1) calendar year and thereafter until terminated at the discretion of the director or upon application by the group.

(3) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in that quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in that quarter bears to the total wages paid during the quarter for service performed in the employ of all members of the group.

(4) The director shall prescribe such rules as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, the accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of the payments.

History. Acts 1941, No. 391, § 7; 1963, No. 93, § 9; 1971, No. 35, § 15; 1977, No. 376, § 13; 1979, No. 492, § 10; 1979, No. 922, § 10; 1981, No. 43, § 15; 1985, No. 8, §§ 12, 13; 1985, No. 9, §§ 12, 13; A.S.A. 1947, § 81-1108; Acts 1987, No. 753, § 17; 1991, No. 100, § 44; 2007, No. 490, § 15; 2013, No. 1128, § 3; 2015, No. 690, § 6; 2019, No. 315, §§ 831, 832; 2019, No. 910, §§ 295-297.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (c)(6)(A) and (g)(4).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Depart-

ment of Workforce Services” in (c)(1); substituted “Division of Workforce Services” for “Department of Workforce Services” in (d)(6)(A) and (e)(1)(C); and substituted “division” for “department” in (e)(1)(C).

11-10-716. Collection — Interest on past due contributions.

(a)(1) If contributions are not paid on the date on which they are due and payable as prescribed by the Director of the Division of Workforce Services, the whole or part thereafter remaining unpaid shall bear interest at the rate of one and one-half percent (1.5%) per month from and after the due date until payment is received by the director.

(2) In computing interest for any period less than a full month, the rate shall be five-hundredths of a percent (0.05%) for each day or fraction thereof.

(3) The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such rules as the director may prescribe.

(b)(1)(A) At the end of each month, deposits in the Unemployment Compensation Fund Clearing Account which have been established as interest and penalty payments collected pursuant to §§ 11-10-716 — 11-10-723 shall be paid over to the Treasurer of State and credited by him or her to the Division of Workforce Services Special Fund, § 19-5-984, created and established in the State Treasury.

(B) All withdrawals shall be upon voucher warrants issued, or caused to be issued, by the director for any one (1) or more of the following purposes as authorized by legislative appropriation:

(i) Refunds of the interest and penalties erroneously paid;

(ii) Replacements of money lost or erroneously expended, as provided by § 11-10-322; and

(iii) Such other and additional purposes necessary to the proper administration of this chapter as specifically provided in the appropriation for the Division of Workforce Services.

(2) Funds received as a result of the application of funds withdrawn from the fund pursuant to and in accordance with the withdrawal purposes and provisions set forth in this subsection shall also be deposited into and credited to the fund.

History. Acts 1941, No. 391, § 14; 1965, No. 33, § 2; 1977, No. 376, § 16; 1979, No. 492, § 13; 1979, No. 922, § 13; 1985, No. 8, § 26; 1985, No. 9, § 26; A.S.A. 1947, § 81-1117; Acts 1991, No. 100, § 45; 1993, No. 403, § 3; 2005, No. 21, § 1; 2005, No. 902, § 11; 2019, No. 315, § 833; 2019, No. 910, §§ 298-300.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (a)(3).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1); and substituted “Division of Workforce Services” for “Department of Workforce Services” twice in (b).

11-10-717. Collection — Failure to pay or report — Penalty — Definition.

(a)(1)(A) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the Director of the Division of Workforce Services.

(B) The employer adjudged in default shall pay the costs of the action, including reasonable attorney's fees for prosecution of the action.

(2) Civil actions brought under §§ 11-10-716 — 11-10-723 to collect contributions or interest from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the Workers' Compensation Law, § 11-9-101 et seq.

(3)(A) The courts of this state shall, in like manner, entertain actions to collect contributions or interest for which liability has accrued under the unemployment compensation law of any other state or of the United States Government.

(B) No suit, including an action for a declaratory judgment, shall be maintained and no writ or process shall be issued by any court of this state that has the purpose or effect of restraining, delaying, or forestalling the collection of any contributions under this chapter or substituting any collection procedure for those prescribed in this chapter.

(4) If, after due notice, a person defaults in payment of contributions, the federal income tax refund of the person is subject to interception under the Claims Resolution Act of 2010, Pub. L. No. 111-291, or a regulation adopted to implement that law.

(b)(1) There may be assessed by the director against employers who do not file their reports in the time prescribed by the director a penalty of ten dollars (\$10.00) or five percent (5%) of the contributions due on the report, whichever is the greater, if the report is filed within twenty (20) days after its due date.

(2) A penalty of twenty dollars (\$20.00) or ten percent (10%) of the contributions due on the report, whichever is the greater, may be assessed on reports filed in excess of twenty (20) days after their due date.

(3) A penalty of thirty dollars (\$30.00) or fifteen percent (15%) of the contributions due on the report, whichever is the greater, shall be assessed when:

(A) The employer has failed to supply all information, including, but not limited to, employee wage information, employee Social Security number, and a separate accounting of seasonal worker wages within and without the normal seasonal period of operations, directed by rules prescribed by the director;

(B) The director deems it necessary to estimate wage information;

(C) A subpoena must be used to obtain wage information; or

(D) The employer files a timely quarterly wage report reflecting no wages were paid but then subsequently files an amended quarterly wage report that:

(i) Reflects the required employee information, including without limitation the employee wage information and the employee Social Security number; and

(ii) Is filed more than twenty (20) days after its due date.

(c)(1)(A) The courts of this state shall recognize and enforce liability for unemployment contributions, penalties, interest, benefit overpayments, court costs, and reasonable attorney's fees imposed by other states that extend a like comity to this state.

(B) The director is empowered to effect collection of unemployment contributions, penalties, interest, benefit overpayments, court costs, and reasonable attorney's fees due the Division of Workforce Services in any jurisdiction that extends such comity.

(C) In no instance shall this state or any other state exceed the collection procedures as provided by the laws of the state in which collections are effected.

(2) In any case, the director may, as agent for and on behalf of any other state, institute and conduct legal action to collect contributions, penalties, interest, benefit overpayments, court costs, and reasonable attorney's fees under a foreign judgment for states that extend comity to this state.

(3)(A) A certificate by the requesting state attesting the authority of the official to collect contributions, penalties, interest, benefit overpayments, court costs, and reasonable attorney's fees shall be conclusive evidence of the authority.

(B) The requesting state shall pay all court and related costs incurred.

(d) Notwithstanding any other provisions of this chapter, any employer or any individual, organization, partnership, corporation, or other legal entity engaging, in any way, in contract construction activity and subcontracting out any part of that activity shall be liable for any unpaid contributions, interest, and penalties due from the subcontracting employer to the extent that the contributions, interest, and penalties accrue and are attributable to that part of his, her, or its work subcontracted to the subcontracting employer.

(e)(1)(A) Notwithstanding any other provisions of this chapter, any employer or any individual, organization, partnership, corporation, or other legal entity that meets the definition of "lessor employing unit" as set forth in subdivision (e)(4) of this section shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit.

(B) Unless the lessor employing unit has timely complied with the provisions of subdivision (e)(2) of this section, any employer, individual, organization, partnership, corporation, or other legal entity leasing employees from any lessor employing unit shall be jointly and

severally liable for any unpaid contributions, interest, and penalties due under this chapter from any lessor employing unit attributable to wages for services performed for the client lessee entity by employees leased to the client lessee entity.

(C) Beginning on or after January 1, 1998, the lessor employer shall keep separate records and submit separate quarterly contribution and wage reports for each of its client lessee entities using the client lessee's account number and unemployment contribution rate.

(2)(A)(i)(a) In order to relieve client lessees from joint and several liability and the separate reporting requirements imposed under subdivision (e)(1) of this section, any lessor employing unit as defined in subdivision (e)(4) of this section may post and maintain a surety bond issued by a corporate surety authorized to do business in Arkansas in the amount of one hundred thousand dollars (\$100,000) to ensure prompt payment of contributions, interest, and penalties for which the lessor employing unit may be or becomes liable under this chapter.

(b) For the period beginning on or after January 1, 1998, through June 30, 2005, a bonded lessor employing unit shall report all clients' wages on the lessor employing unit's quarterly contribution and wage report using its contribution rate, account number, and federal identification number.

(c)(1) Quarterly contribution and wage reports for all clients obtained by bonded lessor employing units on or after July 1, 2005, shall be reported in accordance with subdivision (e)(1)(C) of this section for three (3) consecutive years.

(2) After reporting client wages for three (3) consecutive years as required by subdivision (e)(2)(A)(i)(c)(1) of this section, a bonded lessor employing unit shall report client wages on the lessor employing unit's quarterly contribution and wage report using the lessor employing unit's contribution rate, account number, and federal identification number.

(ii) If after three (3) years, throughout which the lessor employing unit as defined in subdivision (e)(4) of this section has paid all contributions due in a timely manner, the bond shall be reduced to thirty-five thousand dollars (\$35,000) and shall remain at thirty-five thousand dollars (\$35,000) so long as the lessor employing unit continues to report and pay all contributions due in a timely manner.

(iii) The employee leasing company is prohibited from moving the wages of a client from one (1) leasing company account to another leasing company account with a lower rate.

(B) In lieu of a surety bond, the lessor employing unit may deposit in a depository designated by the director securities with marketable value equivalent to the amount required for a surety bond. The securities so deposited shall include authorization to the director to sell any such securities in an amount sufficient to pay any contributions which the lessor employing unit fails to promptly pay when due.

(3) Lessor employing units not currently engaged in the business of leasing employees to client lessees shall comply with subdivision (e)(2) of this section before entering into lease agreements with client lessees.

(4) The term “lessor employing unit” is defined as an independently established business entity that engages in the business of providing leased employees to any other employer, individual, organization, partnership, corporation, or other legal entity, referred to herein as a client lessee. Any legal entity determined to be engaged in the business of outsourcing shall be considered a “lessor employing unit” under this section. Additionally, the licensing requirements of the Arkansas Professional Employer Organization Recognition and Licensing Act, § 23-92-401 et seq., as administered by the State Insurance Department must be satisfied.

(5) The provisions of this subsection shall not be applicable to private employment agencies who provide their employees to employers on a temporary help basis, provided that the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

History. Acts 1941, No. 391, § 14; 1965, No. 33, § 2; 1975, No. 609, § 11; 1977, No. 376, § 16; 1979, No. 492, § 14; 1979, No. 922, § 14; A.S.A. 1947, § 81-1117; Acts 1987, No. 753, §§ 20, 21; 1989, No. 420, §§ 13, 14; 1991, No. 100, §§ 46, 47; 1997, No. 234, § 25; 2003, No. 1223, § 13; 2005, No. 902, §§ 12, 13; 2007, No. 490, § 16; 2015, No. 690, § 7; 2019, No. 315, § 834; 2019, No. 455, § 1; 2019, No. 910, §§ 301, 302.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (b)(3)(A).

The 2019 amendment by No. 455 added (b)(3)(D).

The 2019 amendment by No. 910 substituted “Director of the Division of Workforce Services” for “Director of the Department of Workforce Services” in (a)(1)(A); and substituted “Division of Workforce Services” for “Department of Workforce Services” in (c)(1)(B).

11-10-718. Collection — Priorities under legal dissolutions or distributions — Release of liens.

(a)(1) In the event of any distribution of an employer’s assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all claims except taxes and claims for wages of not more than two hundred fifty dollars (\$250) to each claimant, earned within six (6) months of the commencement of the proceedings.

(2) In the event of an employer’s adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Reform Act of 1978 contributions then or thereafter due shall be entitled to such priority as is provided in section 507 of that act.

(b)(1)(A) If any person liable for the payment of any tax or contributions due under this chapter neglects or refuses to pay the tax or contribution after a demand, the amount, including any interest, penalty, additional amount, or additions to the tax, together with any

costs that may accrue in addition thereto, shall be a lien in favor of the State of Arkansas upon all property and rights to property, whether real or personal, belonging to the person.

(B)(i) The proceedings for enforcing the lien herein provided for shall be brought in the name of the Director of the Division of Workforce Services.

(ii) All liens issued under this chapter by the Director of the Division of Labor shall remain in full force and effect and shall be fully enforceable by the Director of the Division of Workforce Services.

(2) Unless another date is specifically fixed by law, the lien shall arise at the time of the notice of the delinquency to the employer and shall continue until the liability of the amount is satisfied or becomes unenforceable by reason of the statute of limitations as fixed in this chapter.

(3) The lien shall not be valid against any mortgagee, pledgee, purchaser, or judgment creditor until the certificate of assessment provided for in § 11-10-720 has been filed with the clerk of the circuit court of the county wherein the employer domiciles or has a place of business, or suit has been filed by the Director of the Division of Workforce Services in a court of competent jurisdiction under § 11-10-717.

(4) If any person, firm, or corporation shall become delinquent in the payment of any contributions, interest, or penalties required to be paid by this chapter and shall transfer title or ownership of the assets of the business, then the delinquent contributions, interest, or penalties shall be collected by means of a levy against the assets as provided in § 11-10-720.

(c)(1) Upon written application by any person, the Director of the Division of Workforce Services or his or her designee may release from a lien any property or part of the property subject to the lien described in subdivision (b)(1) of this section, provided that:

(A) The Director of the Division of Workforce Services or his or her designee determines at any time that the interest of the Division of Workforce Services has no value; or

(B) The Director of the Division of Workforce Services or his or her designee determines that the lien is clouding the title of the property because of an error in the description of properties or similarity in names.

(2) In determining the value of the interest of the division in the property to be released, the Director of the Division of Workforce Services or his or her designee shall give consideration to the value of the property and to the liens thereon having priority over the lien of the division.

History. Acts 1941, No. 391, § 14; 1953, No. 162, § 18; 1985, No. 8, § 27; 1985, No. 9, § 27; A.S.A. 1947, § 81-1117; Acts 1987, No. 753, § 22; 1991, No. 100, §§ 48, 49; 2019, No. 910, §§ 303-305.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services"

throughout the section; substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (b)(1)(B)(ii); substituted "Division of Workforce Services" for "Department of Workforce Services" in (c)(1)(A); and substituted "division" for "department" twice in (c)(2).

11-10-719. Collection — Refunds.

(a)(1) If not later than three (3) years after the date of payment of any amount as a contribution, interest, or penalty pursuant to this chapter, any employer who has made such a payment makes application for an adjustment thereof in connection with a subsequent contribution, interest, or penalty payment, or for a refund because the adjustment cannot be made, and the Director of the Division of Workforce Services determines that payment of the contribution, interest, or penalty, or any portion thereof, was erroneous, the director may allow the employer to make an adjustment of the amount erroneously paid, without interest, in connection with subsequent contribution, interest, or penalty payments by the employer.

(2) If the adjustment cannot be made, the director may refund, without interest, from the Unemployment Compensation Fund or from the Division of Workforce Services Special Fund, as applicable, the amount erroneously paid.

(b) However, the director shall not allow any adjustment in connection with subsequent contributions for amounts of interest or penalty payments collected on or after July 1, 1965, nor shall he or she refund any payment from the Unemployment Compensation Fund or any account of the Unemployment Compensation Fund, except that he or she may refund any payment from the interest and penalties collected after that date which are in the clearing account pending transfer to the Division of Workforce Services Special Fund.

(c) Refunds of contributions pursuant to § 11-10-210(f)(6) shall be refunded by the director from the fund without application of the provisions of this section.

(d)(1) For like cause and within the same period, adjustment or refund may be so made on the director's own initiative.

(2) In no event shall a refund or adjustment be granted if the director finds that benefit payments have been based on wages payable or paid that have been reported in error.

(e) The director is further authorized, upon proof being submitted satisfactorily to him or her, to allow transfer of payment of contributions so that the paying source shall receive credit for contributions paid.

History. Acts 1941, No. 391, § 14; 1943, No. 138, § 31; 1965, No. 33, § 2; 1971, No. 35, § 18; 1977, No. 376, § 16; A.S.A. 1947, § 81-1117; Acts 1997, No. 234, § 26; 2019, No. 910, § 306.

Amendments. The 2019 amendment substituted "Director of the Division of

Workforce Services" for "Director of the Department of Workforce Services" in (a)(1); and substituted "Division of Workforce Services Special Fund" for "Department of Workforce Services Special Fund" in (a)(2) and (b).

11-10-720. Collection — Certificate of assessment.

(a)(1) If any person, firm, or corporation shall become delinquent in the payment of any contribution, interest, or penalties required to be paid by this chapter, it shall be the duty of the Director of the Division of Workforce Services, when the amount of the contribution, interest, and penalties is determined, either by the report of the employer or by such investigations as the director may have made, to assess the contributions, interest, and penalties so determined against the delinquent employer and to certify the amount of the contributions, interest, and penalties and mail or otherwise deliver a copy of the assessment to the delinquent employer.

(2)(A) At the end of ten (10) days thereafter, the assessment shall become prima facie correct, and the director shall certify the amount of the delinquent contributions, interest, and penalties to the clerk of the circuit court of the county wherein the employer is domiciled or has a place of business, and it shall be the duty of the clerk to file the certificate of record and to enter it in the record of the circuit court for judgment and decree under the procedure prescribed for filing transcripts of judgments by § 16-19-1011 [repealed].

(B) Thereupon, the assessment shall have the force and effect of a judgment of the circuit court and shall bear interest at the rate of ten percent (10%) a year.

(3) Execution shall be issuable, at the request of the director, his or her agent or attorney, or any other employee of the Division of Workforce Services, forthwith by the clerk of the circuit court, directed to the sheriff, who shall make a levy on any property, assets, or effects of the employer against whom the contribution is assessed.

(b) No exemption shall be allowed to the employer from the levy of an execution issued for contributions, interest, and penalties, and no indemnifying bond shall ever be required by the sheriff before making levy.

(c)(1) If any officer to whom any execution, as provided for in this section, shall be delivered shall neglect or refuse to execute or levy it according to law, or shall take in execution any property, or if any property be delivered to him or her by any person against whom an execution may have been issued, and the officer shall neglect or refuse to make sale of the property so taken or delivered according to law, or if any officer shall not return any execution on or before the return day therein specified, or shall make a false return thereof, then, and in any of the cases aforesaid, the officer shall be liable and bound to pay the

whole amount of money in the execution specified, or thereon endorsed and directed to be levied.

(2) It shall be the duty of the clerk of the court from which any execution may be issued to endorse thereon the time when the execution was returned.

(d)(1) An aggrieved employer may have a review of the action of the director in making an assessment for contributions, interest, or penalties, by filing, within ten (10) days after the filing of the assessment with the clerk, a petition for review in the circuit court having jurisdiction.

(2) All actions for review shall have precedence on the docket of the court where filed, and all appeals from the action of any court on the review shall be prosecuted within thirty (30) days after the final order of the court is made.

History. Acts 1941, No. 391, § 14; 1943, No. 138, § 19; 1947, No. 398, § 12; 1977, No. 376, § 16; 1985, No. 8, § 28; 1985, No. 9, § 28; A.S.A. 1947, § 81-1117; Acts 1991, No. 100, §§ 50, 51; 2019, No. 910, §§ 307, 308.

substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a)(1); and substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(3).

Amendments. The 2019 amendment

11-10-721. Collection — Limitation of assessment.

(a) All contributions due under this chapter shall be assessed in the manner provided by this chapter within four (4) years after reports of the contributions have been filed by the employer, and no proceedings in court shall be begun after the expiration of the period, except as otherwise provided in this section.

(b) In the case of a false or fraudulent return with intent to evade tax or a failure to file reports required by this chapter or by the Director of the Division of Workforce Services pursuant to the provisions of this chapter, the tax may be assessed or a proceeding in court for the collection of the tax may be begun at any time.

(c) In case of willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun at any time.

(d) Where the assessment of any contribution required by this chapter has been made within the statutory period of limitation properly applicable thereto, the contribution may be collected by a proceeding in court but only if begun within ten (10) years after the assessment of the contribution except where proceedings are had in court on the assessment within ten (10) years and a judgment of the court is rendered for the contribution. Then the judgment shall have the same force and effect and the limitation shall be the same as other judgments at law under the laws of this state.

(e) The provisions of this chapter shall be applicable in all instances where the limitations set forth in this section have expired under the provisions of this section prior to July 1, 1953.

History. Acts 1941, No. 391, § 14; 1953, No. 162, § 19; 1977, No. 376, § 16; A.S.A. 1947, § 81-1117; Acts 2019, No. 910, § 309. **Amendments.** The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (b).

11-10-722. Collection — Impoundment.

(a) The Director of the Division of Workforce Services or his or her designated representative may give notice of impoundment of any deposits in any bank or savings and loan institution payable to the order of any employer owing any delinquent contributions, interest, and penalties to which a lien has attached under this chapter. Notice of impoundment shall be served by the director or his or her designated representative by certified mail to the bank or savings and loan institution or by written notice served personally upon its president, vice president, cashier, or assistant cashier.

(b) Any bank or savings and loan institution served with notice of impoundment shall be required to recognize the Division of Workforce Services' lien on any deposit subject thereto by withholding payment of any deposit in an amount not to exceed the amount of the delinquent contributions, interest, and penalty to the depositor or to his or her order for a period not to exceed sixty (60) days.

(c) Any bank or savings and loan institution failing to comply shall be held liable for the amount covered by the notice of impoundment up to the amount on deposit to the employer's credit with the bank or savings and loan institution.

(d)(1) Impoundment of the funds shall be revoked when the lien or judgment has been satisfied and may be revoked at any time at the discretion of the director or his or her designated representative.

(2) Revocation of impoundment shall be served in the same manner as the notice of impoundment.

History. Acts 1941, No. 391, § 14; 1975, No. 609, § 12; 1977, No. 376, § 16; A.S.A. 1947, § 81-1117; Acts 1991, No. 100, § 52; 2003, No. 1223, § 14; 2019, No. 910, § 310. substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a); and substituted "Division of Workforce Services" for "Department of Workforce Services" in (b).

Amendments. The 2019 amendment

11-10-723. Special rules regarding transfers of experience and assignment of rates — Definitions.

(a) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is any common ownership, management, or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business, or portion thereof, shall be combined with the employer to whom the business is transferred. The combining of experience and recalculation of applicable employer tax rates shall be

made effective the first day of the calendar quarter following the date of transfer of the trade or business, or portion thereof. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business, or portion thereof; and

(2) If following a transfer of experience under subdivision (a)(1) of this section or transfer of experience as otherwise provided in this chapter involving only a portion of a trade or business, the Director of the Division of Workforce Services determines that a substantial purpose of the transfer was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such an account effective the first day of the calendar quarter following the date of transfer.

(b) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to that person if the director finds that that person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, that person shall be assigned the new employer rate under this chapter. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors that may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long that business enterprise was continued, or whether substantial numbers of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(1) Knowing violations or attempted violations of subsection (a) or subsection (b) of this section or any other provision of this subchapter related to determining the assignment of a contribution rate shall result in an additional two-percent rate increase for the rate year during which the violation or attempted violation occurred and a two-percent additional rate increase in each of the following three (3) rate years. In addition to the rate increases, a penalty of ten percent (10%) of total taxes due shall also be assessed in each of these rate years. All penalty amounts shall be deposited and credited to the Division of Workforce Services Special Fund as set out in § 11-10-716. The additional tax and penalty required by this subsection shall not be credited to the separate account of any employer, nor shall any employer whose contribution rate has been affected by this subsection be eligible to make a voluntary payment pursuant to § 11-10-705(c).

(2) If a person knowingly advises another person in a way that results in a violation of subsection (a) or subsection (b) of this section, the person shall be subject to a penalty of five thousand dollars (\$5,000) plus ten percent (10%) of the total taxes due from the person violating subsection (a) or subsection (b) of this section for any rate year in which a violation occurred. All penalty amounts shall be deposited and credited to the fund as set out in § 11-10-716.

(3) The rate increases and penalties set forth in this subchapter along with any interest that may accrue as a result of these rate increases and penalties shall be in addition to any other rate increases, penalties, and interest provided in this chapter and shall be subject to collection as provided for in §§ 11-10-716 — 11-10-722.

(4) As used in this section, “knowing” and “knowingly” mean having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(5) As used in this section, “violations or attempted violations” and “violates or attempts to violate” include, but are not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(6)(A) In addition to the rate increases and penalties imposed by subdivision (c)(1) of this section, any person in violation of this section who knowingly evades or defeats or attempts to evade or defeat the payment of any unemployment insurance tax, penalty, or interest due under this subchapter shall be guilty of a Class C felony.

(B) In addition to the penalties imposed by subdivision (c)(2) of this section, any person who knowingly assists a person in evading or defeating or attempting to evade or defeat the payment of any unemployment insurance tax, penalty, or interest due under this subchapter shall be guilty of a Class C felony.

(d) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) As used in this section:

(1) “Person” has the meaning given that term by section 7701(a)(1) of the Internal Revenue Code of 1986; and

(2) “Trade or business” shall include the employer’s workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

(g) If this section and § 11-10-710 could both be applied to a transfer or attempted transfer of experience, this section shall take precedence and be applied to the transfer or attempted transfer.

History. Acts 2005, No. 902, § 14; 2019, No. 910, §§ 311, 312.

Amendments. The 2019 amendment substituted “Director of the Division of Workforce Services” for “Director of the

Department of Workforce Services” in (a)(2); and substituted “Division of Workforce Services Special Fund” for “Department of Workforce Services Special Fund” in (c)(1).

SUBCHAPTER 8 — UNEMPLOYMENT COMPENSATION FUND

SECTION.

11-10-801. Establishment and control.

11-10-802. Accounts and deposit.

11-10-803. Withdrawals. [Effective until contingency in Acts 2021, No. 283, § 3 is met.]

SECTION.

11-10-803. Withdrawals. [Effective if contingency in Acts 2021, No. 283, § 3 is met.]

11-10-804. Federal Unemployment Trust Fund — Termination.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General As-

sembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-10-801. Establishment and control.

(a) There is established as a special fund, separate and apart from all public moneys or funds of this state, the "Unemployment Compensation Fund", which shall be administered by the Director of the Division of Workforce Services exclusively for the purposes of this chapter.

(b) The Unemployment Compensation Fund shall consist of:

(1) All the contributions collected under this chapter;

(2) All interest earned upon any money in the Unemployment Compensation Fund;

(3) All property or securities acquired in lieu of contributions or other liabilities to the Unemployment Compensation Fund;

(4) All earnings of property or securities acquired in lieu of contributions or other liabilities;

(5) All moneys recovered on losses sustained by the Unemployment Compensation Fund;

(6) All moneys received from the federal Unemployment Account in the federal Unemployment Trust Fund in accordance with Title XII of the Social Security Act;

(7) All moneys credited to this state's account in the federal Unemployment Trust Fund pursuant to section 903 of the Social Security Act;

(8) All moneys received for the Unemployment Compensation Fund from any other source;

(9) All moneys received from the United States Government as reimbursements pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373;

(10) All moneys received from the stabilization tax under § 11-10-706, except the proceeds of § 11-10-706(f); and

(11) Fifteen percent (15%) of the penalty assessed on all fraudulent overpayments under § 11-10-532(a)(3), the remainder of which shall be credited to the Division of Workforce Services Special Fund.

(c) All moneys in the Unemployment Compensation Fund shall be commingled and undivided.

History. Acts 1941, No. 391, § 9; 1947, No. 398, § 9; 1959, No. 142, § 1; 1965, No. 33, § 1; 1973, No. 350, § 4; A.S.A. 1947, § 81-1112; Acts 1997, No. 234, § 27; 2013, No. 956, § 7; 2019, No. 375, § 1; 2019, No. 910, § 313.

Amendments. The 2019 amendment by No. 375 rewrote (b)(11).

The 2019 amendment by No. 910 substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (a).

11-10-802. Accounts and deposit.

(a)(1) The Director of the Division of Workforce Services shall be ex officio treasurer and custodian of the Unemployment Compensation Fund and disbursing officer of the Division of Workforce Services.

(2) The director shall administer the Unemployment Compensation Fund and shall maintain within the Unemployment Compensation Fund three (3) separate accounts:

(A) A clearing account;

(B) An Unemployment Compensation Trust Fund Account; and

(C) A benefit account.

(b)(1)(A) All moneys payable to the Unemployment Compensation Fund, upon receipt by the director, shall be immediately deposited into the clearing account.

(B) All moneys in the clearing account after clearance shall, except as otherwise provided in this section, be deposited immediately with the United States Secretary of the Treasury to the credit of the account of this state in the federal Unemployment Trust Fund, established and maintained pursuant to section 904 of the Social Security Act any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

(C) All moneys received in the clearing account as proceeds of § 11-10-706(f) shall be deposited and credited to the Division of Workforce Services Special Fund, § 19-5-984, pursuant to § 11-10-716.

(2) The benefit account shall consist of all moneys requisitioned from this state's account in the federal Unemployment Trust Fund in the United States Treasury.

(3) Except as otherwise provided in this section, moneys in the clearing and benefit accounts may be deposited into any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

(4) It shall be lawful for any bank to secure such deposit with it by the pledge or escrow of the assets of the bank consisting of bonds, notes, or certificates of indebtedness which are direct obligations of the United States or of this state, and moneys in the clearing and benefit accounts

shall not be commingled with other state funds but shall be maintained in separate accounts on books of the depository bank, and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state.

(c)(1) The director shall furnish bond to the state with a corporate surety thereon, conditioned that he or she will faithfully perform his or her duties of employment and will properly account for all funds received and disbursed by him or her.

(2) The bond shall be executed in the amount prescribed and in accordance with the applicable provisions of Arkansas law which prescribe surety bonds for state officers and employees and for officers and employees of state boards and commissions.

History. Acts 1941, No. 391, § 9; 1959, No. 142, § 1; 1965, No. 33, § 1; 1979, No. 492, § 11; 1979, No. 922, § 11; A.S.A. 1947, § 81-1112; Acts 1991, No. 100, §§ 53, 54; 1997, No. 234, § 28; 2019, No. 910, § 314.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" and "Division of Workforce Services" for "Department of Workforce Services" in (a)(1).

11-10-803. Withdrawals. [Effective until contingency in Acts 2021, No. 283, § 3 is met.]

(a)(1) Money requisitioned from this state's account in the federal Unemployment Trust Fund shall be used exclusively for the payment of benefits and for refunds from the Unemployment Trust Fund authorized by this chapter, except that money credited to this state's account pursuant to section 903 of the Social Security Act shall be used exclusively as provided in this section. The Director of the Division of Workforce Services shall, from time to time, requisition from the federal Unemployment Trust Fund such amounts not exceeding the amounts standing to this state's account therein as he or she deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt thereof, the money shall be deposited into the benefit account.

(2) For payments beginning on and after January 1, 1997, nothing in subdivision (a)(1) of this section shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for the withholding of federal individual income tax, if the individual elected to have the deduction made and the deduction was made in accordance with Pub. L. No. 103-465 and under a program approved by the United States Secretary of Labor.

(b) Any balance of money requisitioned from the federal Unemployment Trust Fund that remains in the benefit account after the expiration of the period for which it was requisitioned shall be deducted from estimates for, and utilized in the payment of, benefits and refunds during succeeding periods or, at the discretion of the director, shall be redeposited with the United States Secretary of the Treasury to the credit of the state's account in the federal Unemployment Trust Fund.

(c)(1) Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(2) All warrants issued for the payment of benefits and refunds shall bear the signature of the director or his or her duly authorized agent for that purpose.

(d)(1) Money credited to the account of this state in the federal Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. However, the money may not be used for Job Training Partnership Act [repealed] programs and activities. The money may be requisitioned pursuant to the provisions of this chapter for the payment of benefits. The money may also be requisitioned and used for the payment of expenses incurred in the administration of this chapter. The money may be used only pursuant to a specific appropriation by the General Assembly and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(A) Specifies the purposes for which money is appropriated and the amounts appropriated therefor;

(B) Limits the period within which the money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law;

(C) Limits the amount which may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state; and

(D) Notwithstanding subdivisions (d)(1)(A)-(C) of this section, moneys credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program or in a manner allowable by the enabling legislation.

(2) Any amount credited to the state's account under section 903 of the Social Security Act that has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the Unemployment Compensation Fund balance for the purpose of determining solvency of the fund and for experience rating purposes.

(3)(A) Money appropriated as provided in this section for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under the appropriation and, upon requisition, shall be deposited into the Employment Security Administration Fund, § 11-10-320, from which the payments shall be made.

(B) Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the federal Unemployment Trust Fund.

History. Acts 1941, No. 391, § 9; 1947, No. 398, § 9; 1959, No. 142, § 1; 1965, No. 33, § 1; 1969, No. 319, § 1; 1973, No. 350, § 4; 1975, No. 609, § 8; 1983, No. 482, § 31; A.S.A. 1947, § 81-1112; Acts 1987, No. 753, § 18; 1993, No. 6, § 17; 1995, No. 519, § 10; 1995, No. 1296, § 42; 1999, No. 1116, § 15; 2019, No. 910, § 315.

Publisher's Notes. For text of section effective if contingency is met, see the following version.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in the second sentence of (a)(1).

11-10-803. Withdrawals. [Effective if contingency in Acts 2021, No. 283, § 3 is met.]

(a)(1) Money requisitioned from this state's account in the federal Unemployment Trust Fund shall be used exclusively for the payment of benefits and for refunds from the Unemployment Trust Fund authorized by this chapter, except that money credited to this state's account pursuant to section 903 of the Social Security Act shall be used exclusively as provided in this section. The Director of the Division of Workforce Services shall, from time to time, requisition from the federal Unemployment Trust Fund such amounts not exceeding the amounts standing to this state's account therein as he or she deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt thereof, the money shall be deposited into the benefit account.

(2) For payments beginning on and after January 1, 1997, nothing in subdivision (a)(1) of this section shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for the withholding of federal individual income tax, if the individual elected to have the deduction made and the deduction was made in accordance with Pub. L. No. 103-465 and under a program approved by the United States Secretary of Labor.

(3) For payments beginning on and after January 1, 2022, subdivision (a)(1) of this section shall not be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for the withholding of Arkansas individual income tax, if the individual elected to have the deduction made and the deduction was made under § 26-51-905 and under a program approved by the United States Secretary of Labor.

(b) Any balance of money requisitioned from the federal Unemployment Trust Fund that remains in the benefit account after the expiration of the period for which it was requisitioned shall be deducted from estimates for, and utilized in the payment of, benefits and refunds during succeeding periods or, at the discretion of the director, shall be redeposited with the United States Secretary of the Treasury to the credit of the state's account in the federal Unemployment Trust Fund.

(c)(1) Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(2) All warrants issued for the payment of benefits and refunds shall bear the signature of the director or his or her duly authorized agent for that purpose.

(d)(1) Money credited to the account of this state in the federal Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. However, the money may not be used for Job Training Partnership Act [repealed] programs and activities. The money may be requisitioned pursuant to the provisions of this chapter for the payment of benefits. The money may also be requisitioned and used for the payment of expenses incurred in the administration of this chapter. The money may be used only pursuant to a specific appropriation by the General Assembly and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(A) Specifies the purposes for which money is appropriated and the amounts appropriated therefor;

(B) Limits the period within which the money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law;

(C) Limits the amount which may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state; and

(D) Notwithstanding subdivisions (d)(1)(A)-(C) of this section, moneys credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program or in a manner allowable by the enabling legislation.

(2) Any amount credited to the state's account under section 903 of the Social Security Act that has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the Unemployment Compensation Fund balance for the purpose of determining solvency of the fund and for experience rating purposes.

(3)(A) Money appropriated as provided in this section for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under the appropriation and, upon requisition, shall be deposited into the Employment Security Administration Fund, § 11-10-320, from which the payments shall be made.

(B) Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the federal Unemployment Trust Fund.

History. Acts 1941, No. 391, § 9; 1947, No. 398, § 9; 1959, No. 142, § 1; 1965, No. 33, § 1; 1969, No. 319, § 1; 1973, No. 350, § 4; 1975, No. 609, § 8; 1983, No. 482, § 31; A.S.A. 1947, § 81-1112; Acts 1987, No. 753, § 18; 1993, No. 6, § 17; 1995, No. 519, § 10; 1995, No. 1296, § 42; 1999, No. 1116, § 15; 2019, No. 910, § 315; 2021, No. 283, § 1.

Publisher's Notes. For text of section effective until the contingency is met, see the preceding version.

Amendments. The 2019 amendment substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in the second sentence of (a)(1).

The 2021 amendment added (a)(3).

Effective Dates. Acts 2021, No. 283, § 3. Contingent effective date clause provided:

"(1)(A) The Director of the Division of Workforce Services notifies the Secretary of the Department of Finance and Administration that the Division of Workforce Services' computer technology and infor-

mation management systems are prepared to carry out withholding under this act; and

"(B) The withholding program created by this act is approved by the United States Secretary of Labor or the United States Secretary of Labor determines approval is not necessary.

"(2)(A) Upon occurrence of the events in subdivision (1) of this section, the Secretary of the Department of Finance and Administration shall make a proclamation that withholding under this act shall begin on the first day of the calendar month following the proclamation.

"(B) Withholding under this act shall begin on the first day of the calendar month following the secretary's proclamation.

"(3) The director and the Secretary of the Department of Finance and Administration shall cooperate to request the United States Secretary of Labor's approval of the withholding program created under this act."

11-10-804. Federal Unemployment Trust Fund — Termination.

(a) The provisions of this subchapter, to the extent that they relate to the federal Unemployment Trust Fund, shall be operative only so long as the federal Unemployment Trust Fund continues to exist and so long as the United States Secretary of the Treasury continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of the federal Unemployment Trust Fund, from which no other state is permitted to make withdrawals.

(b)(1) If and when the federal Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, and securities belonging to the Unemployment Compensation Fund of this state shall be administered by the Director of the Division of Workforce Services as a trust fund for the purpose of paying benefits under this chapter.

(2)(A) The director shall have authority to hold, invest, transfer, sell, deposit, and release the moneys and any properties, securities, or earnings acquired as an incident to the administration.

(B) The moneys shall be invested in readily marketable classes of securities, bonds, or other interest-bearing obligations of the United

States or secured as to both interest and principal by the United States.

(C) The investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

History. Acts 1941, No. 391, § 9; 1965, No. 33, § 1; A.S.A. 1947, § 81-1112; Acts 2019, No. 910, § 316.

Amendments. The 2019 amendment

substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (b)(1).

SUBCHAPTER 9 — DIVISION OF STATE NEW HIRE REGISTRY

SECTION.

11-10-901. Creation — Administrator — Authority.

11-10-902. Reporting requirements — Enforcement of child support obligations — Confidentiality — Definitions.

Effective Dates. Acts 2013, No. 956, § 10: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Workforce Services must ensure the prompt determination of claims for unemployment insurance benefits; that the state's unemployment insurance program must remain in conformity with federal law requirements; and that this act is immediately necessary because a delay would interfere with continued provision of benefits and services to eligible persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-10-901. Creation — Administrator — Authority.

(a)(1) The Director of the Division of Workforce Services is assigned responsibility for the administration of the State New Hire Registry.

(2) The director shall hire an administrator of the State New Hire Registry who shall serve at the pleasure of the director.

(b)(1) The administrator shall compile a state registry of newly hired and returning employees as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

(2) The director may enter into such professional services contracts as may be necessary to assist in the development and operation of the State New Hire Registry.

(c) The director shall enter into agreements with other state and federal agencies as may be necessary to properly administer and carry out the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, to ensure confidentiality of data and reimbursement for any costs associated with meeting the requirements of this subchapter and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

History. Acts 1997, No. 1276, § 1; Workforce Services” for “Director of the 2009, No. 802, § 12; 2019, No. 910, § 317. Department of Workforce Services” in
Amendments. The 2019 amendment (a)(1). substituted “Director of the Division of

11-10-902. Reporting requirements — Enforcement of child support obligations — Confidentiality — Definitions.

(a) As used in this section:

(1) “Administrator” means the administrator of the State New Hire Registry;

(2) “Employee” means an individual who is an employee as defined in Chapter 24 of the Internal Revenue Code of 1986 but does not include an employee of a federal or state agency performing intelligence or counterintelligence operations if the head of the agency has determined that reporting pursuant to subsection (b) of this section could endanger the safety of the employee or could compromise an ongoing operation or investigation;

(3) “Employer” means an employer as that term is defined in section 3401(d) of the Internal Revenue Code of 1986 and includes any labor organization and any governmental entity; and

(4) “Labor organization” means a labor organization as that term is defined in section 2(5) of the National Labor Relations Act and includes any entity, sometimes known as a “hiring hall”, that is used by the labor organization and an employer to carry out the requirements listed in section 8(f)(3) of the federal act of an agreement between the organization and the employer.

(b)(1) The administrator shall compile an automated state registry of newly hired and returning employees.

(2) An employer shall report electronically or in any manner authorized by the Division of Workforce Services for inclusion in the State New Hire Registry whenever an employee:

(A) Is newly hired; or

(B) If the individual was previously employed by the employer but has been separated from the previous employment for at least sixty (60) consecutive days, returns to work.

(3) An employer shall include in each report:

(A) The name, address, and Social Security number of the employee and the date the employee began performing services for the employer; and

(B) The name, address, and federal taxpayer identification number of the employer.

(4)(A) An employer shall make the report by submitting a copy of Internal Revenue Service Form W-4 for the employee or an equivalent form.

(B)(i) An employer may transmit the report by first class mail, magnetically, or electronically.

(ii) If an employer makes the report by mail, the reporting date is that of the postmark.

(C) The report shall be received not later than twenty (20) days after the date the employer hires the employee or, in the case of an employer transmitting reports magnetically or electronically, by two (2) monthly transmissions, if necessary, not less than twelve (12) days nor more than sixteen (16) days apart.

(5)(A) An employer that has employees employed in two (2) or more states and transmits reports magnetically or electronically may comply with the reporting requirements of this section by designating one (1) state in which the employer has employees and to which the employer will transmit the report required by this section.

(B) An employer that transmits reports shall notify the United States Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(c)(1) Information reported pursuant to this section shall be entered into the State New Hire Registry database maintained by the Division of Workforce Services or its designated contractor within five (5) business days of receipt from an employer. As used herein, "business day" means a day on which state offices are open for regular business.

(2) Within two (2) business days after the date information regarding a newly hired employee is entered into the State New Hire Registry, the Office of Child Support Enforcement shall transmit a notice to the employer directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past due child support obligation, of the employee.

(3) Within three (3) business days after the date information regarding a newly hired employee is entered into the State New Hire Registry, the Division of Workforce Services or its designated contractor shall furnish the information to the National Directory of New Hires.

(4) On a quarterly basis, the State New Hire Registry shall furnish to the National Directory of New Hires extracts of reporting required to

be made to the United States Secretary of Labor concerning the wages and unemployment compensation paid to individuals by such dates, in such format, and containing such information as the United States Secretary of Health and Human Services shall specify in regulations.

(5)(A) The Department of Human Services shall have access to information reported by employers pursuant to this section for the purpose of verifying eligibility for programs pursuant to 42 U.S.C. § 1320b-7.

(B) The Division of Workforce Services shall have access to information reported by employers pursuant to this section for purposes of administering the Division of Workforce Services' programs.

(C) The Workers' Compensation Commission shall have access to information reported by employers pursuant to this section for purposes of administering the workers' compensation programs.

(d)(1) The Division of Workforce Services shall directly or by contract conduct automated comparisons of the Social Security numbers reported by employers and the Social Security numbers appearing within records of the Office of Child Support Enforcement for cases being enforced under the Title IV-D State Plan.

(2) When an information comparison reveals a match with respect to the Social Security number of an individual required to provide child support under a support order, the State New Hire Registry shall immediately provide the Office of Child Support Enforcement with the name, address, and Social Security number of the employee to whom the Social Security number is assigned and the name, address, and federal employer identification number of the employer.

(e) The Office of Child Support Enforcement shall use information received pursuant to subsection (d) of this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations and may disclose that information to its agents under contract for purposes connected to the administration of the Title IV-D Child Support Program.

(f) All information gathered and maintained by the State New Hire Registry:

(1) Shall be held confidential and be utilized solely for the purposes authorized in this section; and

(2) Is an exception to the open public record requirements of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(g) To the maximum extent allowable, all expenses associated with the development and operation of the State New Hire Registry shall be reimbursed through available funding under the Title IV-D Child Support Program.

History. Acts 1997, No. 1276, § 2; substituted "Division of Workforce Services" for "Department of Workforce Services" throughout the section. 2009, No. 802, § 13; 2013, No. 956, § 8; 2019, No. 910, §§ 318-322.

Amendments. The 2019 amendment

SUBCHAPTER 10 — UNEMPLOYMENT TRUST FUND FINANCING ACT OF 2011

SECTION.

11-10-1006. Election. [Effective January 1, 2022.]

11-10-1017. Unemployment obligation assessment.

SECTION.

11-10-1018. Division of Workforce Services — Bond Financing Trust Fund.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department

secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 610, § 41: Jan. 1, 2022.

11-10-1006. Election. [Effective January 1, 2022.]

(a)(1) Arkansas Unemployment Trust Fund Bonds shall not be issued under this subchapter unless the issuance of bonds has been approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor as provided under § 11-10-1005.

(2)(A) An election under this section may be held on a date under § 7-11-205.

(B)(i) If a special election is held on the date of the presidential preferential primary election, preferential primary election, or general primary election, the issue or issues to be voted upon at the special election shall be included on the ballot of each political party.

(ii) However, separate ballots containing only the issue or issues to be voted upon at the special election shall be prepared and made available to voters requesting a separate ballot.

(iii) A voter shall not be required to vote in a political party's presidential preferential primary election, preferential primary election, or general primary election in order to be able to vote in the special election.

(b)(1) Notice of the election shall be:

(A) Published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to the election; and

(B) Mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the election.

(2) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the following form:

“Authorizing the Arkansas Development Finance Authority to issue Arkansas Unemployment Trust Fund Bonds (the ‘Bonds’) in a total principal amount not to exceed five hundred million dollars (\$500,000,000). If approved, the bonds may be issued in one (1) or more series for the purpose of repaying the principal of and interest on advances from the federal trust fund under Title XII of the Social Security Act, 42 U.S.C. § 1321, paying the costs of issuance of the bonds including without limitation the costs of bond insurance or other credit enhancement, paying unemployment benefits by depositing bond proceeds into the Unemployment Compensation Fund, providing a debt service reserve, and paying capitalized interest on the bonds for a period not to exceed two (2) years.

The bonds shall be payable from certain designated revenues. Under the Unemployment Trust Fund Financing Act of 2011, (‘the Bond Act’), the bonds will be repaid from an unemployment obligation assessment imposed on employers. The bonds shall be issued under the authority of and the terms set forth in the Bond Act.

The unemployment obligation assessment shall be based on the aggregate principal amount of bonds issued for nonrefunding purposes and shall be determined by multiplying the employer’s contribution rate in effect on the date that the Governor issues a proclamation calling an election on the issuance of the bonds for employers with accounts as of such date and the employer’s contribution rate as of the employer’s liability date for employers establishing accounts after the date of the proclamation by:

- (a) 25% if the aggregate principal amount of bonds issued is \$350,000,000 or less;
- (b) 30% if the aggregate principal amount of bonds issued is \$350,000,001 to \$400,000,000;
- (c) 33.5% if the aggregate principal amount of bonds issued is \$400,000,001 to \$450,000,000; and
- (d) 37.5% if the aggregate principal amount of bonds issued is \$450,000,001 to \$500,000,000.”

(c) The ballot title shall be “Issuance of Arkansas Unemployment Trust Fund Bonds, and levy and pledge of an unemployment obligation assessment”. On each ballot there shall be printed the title, the proposition set forth in subdivision (b)(2) of this section, and the following:

“FOR issuance of Arkansas Unemployment Trust Fund Bonds in an amount not to exceed \$500,000,000, and levy and pledge of an unemployment obligation assessment[]”

“AGAINST issuance of Arkansas Unemployment Trust Fund Bonds in an amount not to exceed \$500,000,000, and levy and pledge of an unemployment obligation assessment[]”

(d) The notice and ballot shall contain a definition of “employer’s contribution rate” as described in §§ 11-10-704 and 11-10-705.

(e)(1) Each county board of election commissioners shall hold and conduct the election and may take any action with respect to the appointment of election officials and other matters as required by the laws of the state.

(2)(A) The vote shall be canvassed and the result of the vote declared in each county by the board.

(B) Within ten (10) days after the date of the election, the results shall be certified by the boards to the Secretary of State, who shall tabulate all returns received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(f)(1) The result of the election shall be proclaimed by the Governor by the publication of a proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint challenging the proclaimed results is filed in Pulaski County Circuit Court within thirty (30) days after the date of the publication.

(g)(1) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, the Arkansas Development Finance Authority shall proceed with the issuance of the bonds in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the issuance of the bonds, the Arkansas Development Finance Authority shall have no authority to issue bonds.

(h) Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

History. Acts 2011, No. 1125, § 1; 2021, No. 610, § 11.

Publisher's Notes. For text of section effective until January 1, 2022, see the bound volume.

Amendments. The 2021 amendment

rewrote (a)(2)(A); deleted former (a)(2)(B) and (a)(2)(C), and redesignated former (a)(2)(D) as (a)(2)(B); and deleted former (a)(2)(E).

Effective Dates. Acts 2021, No. 610, § 41: Jan. 1, 2022.

11-10-1017. Unemployment obligation assessment.

(a)(1)(A) Except employers that have made an election to reimburse the Unemployment Compensation Fund under § 11-10-713(c), each employer shall pay a separate and additional assessment, to be known as the "unemployment obligation assessment", on wages paid by that employer with respect to employment in addition to the contributions, stabilization and extended benefits taxes, and advance interest taxes levied under §§ 11-10-703 — 11-10-708.

(B) The unemployment obligation assessment shall be based on the aggregate principal amount of bonds issued for nonrefunding purposes and shall be determined by multiplying the employer's contribution rate as described in §§ 11-10-704 and 11-10-705 and in effect on the date that the Governor issues a proclamation calling an election on the issuance of the bonds for employers with accounts as

of such date and in effect as of the employer's liability date for employers establishing accounts after the date of the proclamation, by:

(i) Twenty-five percent (25%) if the aggregate principal amount of bonds issued is three hundred fifty million dollars (\$350,000,000) or less;

(ii) Thirty percent (30%) if the aggregate principal amount of bonds issued is three hundred fifty million one dollars (\$350,000,001) to four hundred million dollars (\$400,000,000);

(iii) Thirty-three and five-tenths percent (33.5%) if the aggregate principal amount of bonds issued is four hundred million one dollars (\$400,000,001) to four hundred fifty million dollars (\$450,000,000); and

(iv) Thirty-seven and five-tenths percent (37.5%) if the aggregate principal amount of bonds issued is four hundred fifty million one dollars (\$450,000,001) to five hundred million dollars (\$500,000,000).

(C)(i) The effective date of the unemployment obligation assessment shall be the first day of the calendar quarter immediately following the month in which the Secretary of State certifies the vote of the voters approving the unemployment obligation assessment and the issuance of the bonds under this subchapter.

(ii) The unemployment obligation assessment is effective until the end of the quarter immediately following the repayment of all bonds authorized under this subchapter.

(2)(A) This unemployment obligation assessment shall not be credited to the separate account of any employer.

(B) The unemployment obligation assessment shall be levied and collected in the same manner as contributions and shall be subject to the same penalty and interest, collection, impoundment, priority, lien, certificate of assessment, and assessment provisions and procedures under §§ 11-10-716 — 11-10-722.

(b)(1) Receipts from the unemployment obligation assessment and any penalty and interest on the unemployment obligation assessment shall be deposited into the Unemployment Compensation Fund Clearing Account.

(2) At least once each month, deposits of the unemployment obligation assessment payment and any interest and penalty payments applicable to the unemployment obligation assessment shall be deposited into the Division of Workforce Services' Bond Financing Trust Fund.

(c) Debt service on the bonds shall be paid in a timely manner and shall not be paid directly or indirectly by an equivalent reduction in unemployment contributions or taxes imposed under:

(1) Sections 11-10-701 — 11-10-715; or

(2) Section 11-10-801 et seq.

(d) The unemployment obligation assessment may be used to:

(1) Repay the principal of and interest on advances from the federal trust fund under Title XII of the Social Security Act, 42 U.S.C. § 1321;

(2) Pay the costs of issuance of the bonds, including without limitation the costs of bond insurance or other credit enhancement;

(3) Pay unemployment benefits by depositing bond proceeds into the Unemployment Compensation Fund;

(4) Provide a debt service reserve; and

(5) Pay capitalized interest on the bonds for a period not to exceed two (2) years.

(e) The Director of the Division of Workforce Services shall promulgate rules to carry out the provisions of this section.

(f) Upon retirement of all bonds, the following shall be transferred to the Unemployment Compensation Fund:

(1) Surplus unemployment obligation assessment collections; and

(2) Delinquent taxes, penalties, or interest due under the unemployment obligation assessment.

History. Acts 2011, No. 1125, § 1; 2019, No. 910, §§ 323, 324.

Amendments. The 2019 amendment substituted "Division of Workforce Services' Bond Financing Trust Fund" for

"Department of Workforce Services Bond Financing Trust Fund" in (b)(2); and substituted "Director of the Division of Workforce Services" for "Director of the Department of Workforce Services" in (e).

11-10-1018. Division of Workforce Services — Bond Financing Trust Fund.

(a)(1) There is established on the books of the Division of Workforce Services a special restricted fund to be known as the "Bond Financing Trust Fund", to be maintained and administered by the division under this subchapter for the purposes stated in this subchapter.

(2) The following shall be deposited into the Bond Financing Trust Fund:

(A) Collections of the unemployment obligation assessment; and

(B) Any penalties and interest with respect to the unemployment obligation assessment.

(b) Moneys in the Bond Financing Trust Fund may be used to:

(1) Pay debt service on the bonds;

(2) Make refunds of the unemployment obligation assessment and interest and penalty payments that were erroneously paid;

(3) Return moneys to the Unemployment Compensation Fund Clearing Account that may have been incorrectly identified and erroneously transferred to the Bond Financing Trust Fund; and

(4) Purchase or redeem outstanding bonds.

(c) The division shall maintain the Bond Financing Trust Fund at the Arkansas Development Finance Authority or at one (1) or more financial institutions within or outside the state.

(d) Income from investment of moneys in the Bond Financing Trust Fund shall be deposited into and credited to the Bond Financing Trust Fund.

(e)(1) All moneys received for, deposited into, or paid to the division for deposit into the Bond Financing Trust Fund:

- (A) Are specifically declared to be cash funds restricted in their use;
- (B) Shall not be deposited into the State Treasury for the purposes of:
 - (i) Arkansas Constitution, Article 5, § 29;
 - (ii) Arkansas Constitution, Article 16, § 12;
 - (iii) Arkansas Constitution, Amendment 20; or
 - (iv) Any other constitutional provision or statutory law; and
- (C) Shall be held and applied by the division and the Arkansas Development Finance Authority as agent for the division solely for the uses set forth in this subchapter.
- (2) Interest and other moneys received from the investment of moneys in the Bond Financing Trust Fund are cash funds restricted in their use and shall not be deposited into the State Treasury but shall be held and applied by the division and the Arkansas Development Finance Authority as agent for the division solely for the uses set forth in this subchapter.
- (f) Upon retirement of all bonds, the following shall be transferred to the Unemployment Compensation Fund:
 - (1) Surplus unemployment obligation assessment collections; and
 - (2) Delinquent taxes, penalties, or interest due under the unemployment obligation assessment.

History. Acts 2011, No. 1125, § 1; 2019, No. 910, §§ 325-327.
Amendments. The 2019 amendment substituted “Division of Workforce Ser-

vices” for “Department of Workforce Services” in (a)(1); and substituted “division” for “department” throughout the section.

CHAPTER 11
EMPLOYMENT OFFICES AND AGENCIES

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. PRIVATE EMPLOYMENT AGENCIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
11-11-101. Recruitment of labor by foreign labor agents.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-11-101. Recruitment of labor by foreign labor agents.

(a) No foreign labor agent, labor bureau or employment agency, or any other person shall enter this state and attempt to hire, induce, or take from this state any labor, singularly or in groups, for any purpose, whether or not a fee or charge is extracted from the worker, without first applying to the Director of the Division of Labor for a license to do so and filing with the director:

(1) A statement as to where the labor is to be taken, for what purpose, for what length of time, and whether transportation is to be paid to and from the destination, if temporary;

(2) A statement of the financial standing of the employer desiring the labor;

(3) An affidavit of authority to represent the employer in this state; and

(4) Whatever other information the director may require.

(b)(1) The director shall determine whether the person desiring the labor from this state is a labor agent, labor bureau, or employment agency and, if so, whether the applicant is qualified to be licensed under the laws of this state and according to the provisions of this section.

(2) The director, after the investigation, may refuse to license or register the applicant until the applicant has complied with the provisions of this section.

(3) The applicant shall, in the event of unfavorable action by the director, have the right of appeal to the proper court.

(c) This section is cumulative to all existing laws affecting the hiring or employment of labor.

History. Acts 1949, No. 272, §§ 1, 2; A.S.A. 1947, §§ 81-1011, 81-1012; Acts 2019, No. 910, § 5367.

Amendments. The 2019 amendment

substituted "Director of the Division of Labor" for "Director of the Department of Labor" in the introductory language of (a).

SUBCHAPTER 2 — PRIVATE EMPLOYMENT AGENCIES

SECTION.

11-11-202. Definitions.

11-11-203. Penalty.

11-11-204. Director and division — Powers and duties.

11-11-208. License required — Penalties.

11-11-209. Certificate of exemption required for certain organizations.

SECTION.

11-11-210. Employment counselor's license — Application — Qualifications.

11-11-211. Agency manager license — Application — Qualifications.

11-11-212. Employment agency license — Application — Qualifications.

SECTION.

- 11-11-213. Employment agency license — Bond required — Action on the bond.
- 11-11-214. Investigation of license applicant by director.
- 11-11-215. Employment agency license — Scope — Change of license.
- 11-11-216. Examination for licenses.
- 11-11-218. Temporary licenses.
- 11-11-219. Renewal of licenses.
- 11-11-220. Cessation of business by licensee.
- 11-11-221. Issuance, refusal, suspension, or revocation of license — Grounds.

SECTION.

- 11-11-222. Refusal, suspension, or revocation of license — Notice and hearing.
- 11-11-223. Judicial review of director's administrative orders.
- 11-11-225. Miscellaneous restrictions and requirements.
- 11-11-227. Fee restrictions and requirements.
- 11-11-228. Filing of fee schedule, forms, and contracts required.
- 11-11-229. Records required.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-11-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Agency manager" means the individual designated by the employment agency to conduct the general management, administration, and operation of a designated employment agency office. Every employment agency must maintain a licensed agency manager at each of its separate office locations;

(2) "Applicant" except when used to describe an applicant for an employment agency or agency manager's or counselor's license means any person, whether employed or unemployed, seeking or entering into an arrangement for employment or change of employment through the medium or service of an employment agency;

(3) [Repealed.]

(4) [Repealed.]

(5) "Employee" means a person performing or seeking to perform work or service of any kind or character for compensation;

(6) "Employer" means a person employing or seeking to employ a person for compensation;

(7)(A) "Employment agent" or "employment agency" means any person engaged for hire, compensation, gain, or profit in the business of furnishing persons seeking employment with information or other service enabling the persons to procure employment by or through employers or furnishing any other person who may be seeking to employ or may be in the market for help of any kind with information enabling the other person to procure help.

(B) However, "employment agent" or "employment agency" does not mean:

(i) Any person who prepares resumes for individuals for employment purposes if the person who prepares the resumes does not refer or purport to refer prospective employees to employers or employers to prospective employees, does not represent himself or herself as an employment agency, or does not have any financial connection with any employment agency;

(ii) Any person who employs individuals to render part-time or temporary services to, for, or under the direction of a third person if the person employing the individuals, in addition to paying wages or salaries, pays federal Social Security taxes and state and federal unemployment insurance and secures work-service to, for, or under the direction of a third person;

(iii) Any bona fide nursing school, nurses' registry, management consulting firm, business school, or vocational school whose primary function and purpose is training and education, except that if such an organization charges a fee, directly or indirectly, for job placement of individuals, the organization shall be an employment agency within the meaning of this subchapter;

(iv) A labor organization;

(v) Any person who publishes advertisements placed and paid for by a third person seeking employment or an employee, provided that the person does not procure or offer to procure employment or employees; or

(vi) Any person who contracts with an employer to recruit employees for the employer without charge to the prospective employee;

(8) "Employment counselor" means an employee of any employment agency who interviews, counsels, or advises applicants or employers, or both, on employment or allied problems or who makes or arranges contracts or contacts between employers and employees. The term "employment counselor" includes employees who solicit orders for employees from prospective employers;

(9) "Fee" shall mean anything of value, including any money or other valuable consideration exacted, charged, collected, or received, directly or indirectly, or paid or contracted to be paid for any services or act by an employment agency; and

(10) "Person" means any individual, company, firm, association, partnership, or corporation.

History. Acts 1975, No. 493, § 2; 1977, No. 390, § 1; A.S.A. 1947, § 81-1014; Acts 1989, No. 750, § 1; 1997, No. 435, § 1; 2019, No. 910, § 5368.

Amendments. The 2019 amendment repealed the defined terms “department” and “director”.

11-11-203. Penalty.

(a) The Director of the Division of Labor shall have authority to impose a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) for violation of the provisions of this subchapter by an employment agency or its employees or agents.

(b) The director shall notify the employment agency in writing of the reasons for imposition of a fine and at that time shall make available to the employment agency a signed written statement by any individual having filed a complaint with the director relative to the matter for which a fine has been imposed by the director.

(c) The agency shall have the right to a hearing before the director and the right to judicial review provided by § 11-11-223 with respect to the fine.

History. Acts 1975, No. 493, § 9; A.S.A. substituted “Director of the Division of Labor” for “Director of the Department of Labor” in (a).
1947, § 81-1021; Acts 2019, No. 910, § 5369.

Amendments. The 2019 amendment

11-11-204. Director and division — Powers and duties.

(a) It shall be the duty of the Division of Labor, and it shall have the power, jurisdiction, and authority to administer and enforce the provisions of this subchapter.

(b) The Director of the Division of Labor shall have the power, jurisdiction, and authority to issue licenses to employment agencies, agency managers, and counselors and to refuse to issue, revoke, or suspend the licenses when, after due investigation, and in compliance with the procedures set forth in §§ 11-11-221 and 11-11-222, the director finds that the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or counselor within the meaning of this subchapter or any rules or orders lawfully promulgated under this subchapter.

(c)(1) Complaints against any person, employment agent, agency manager, or counselor may be made to the division orally or in writing.

(2) The director shall have the power to compel attendance of witnesses by issuance of subpoenas, administer oaths, direct production of documents and records, and direct taking of testimony and evidence concerning all matters within the jurisdiction of the division.

(3) The director may order testimony to be taken by deposition in any proceeding pending before the division at any stage of the proceeding.

(4) The director or his or her duly authorized agent shall at all reasonable times have access to, for the purpose of examination and copying, the books, records, papers, and documents of any person being investigated or proceeded against under the provisions of this subchap-

ter, so long as the books, records, papers, or documents sought to be inspected or copied are reasonably related to the investigation or proceeding being conducted by the director.

(5) The director or his or her authorized agent shall, upon application of any party to proceedings before the director, issue to the party subpoenas requiring the attendance and testimony of witnesses or the production of any books, records, papers, or documents reasonably related to issues involved in proceedings before the director or an investigation conducted by the director.

(6) If any person in proceedings before the director or in investigations conducted by the director disobeys or resists any lawful order or process issued by the director or his or her authorized agents, or fails to produce, after being lawfully directed to do so, any book, paper, record, or document, or refuses to appear and testify after being subpoenaed to do so, the director shall certify the facts to any court of competent jurisdiction in the state or to the Pulaski County Circuit Court.

(7) The court shall have authority to conduct hearings and punish any person for failure or refusal to testify or produce books, papers, documents, or records subpoenaed or ordered by the director as though the conduct constituted contempt of court.

(8) Witnesses summoned by the director or his or her authorized agent shall be paid the same fees and mileage paid to witnesses in the courts of this state.

(d)(1) The director may prescribe such rules for the conduct of the business of private employment agencies as necessary to implement this subchapter.

(2) These rules shall have the force and effect of law and shall be enforced by the director in the same manner as the provisions of this subchapter.

(3) Adoption of rules pursuant to this subsection shall be carried out in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The division shall have authority to investigate employment agents, agency managers, and counselors. The division shall have the right to examine records required by law to be kept and maintained by employment agents, agency managers, and counselors and to examine the offices where the business is or shall be conducted by them.

(f) The division may seek to recover in a court of competent jurisdiction fees charged or collected in violation of this subchapter.

History. Acts 1975, No. 493, § 9; A.S.A. 1947, § 81-1021; Acts 2007, No. 827, § 126; 2009, No. 405, § 1; 2019, No. 315, §§ 835-837; 2019, No. 910, § 5370.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (b); and deleted "and regulations" following "rules" in (d)(1) and (d)(3).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a); substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (b); and substituted "division" for "department" in the section heading and throughout the section.

11-11-208. License required — Penalties.

(a) No person shall engage in the business of or act as an employment agent, agency manager, or counselor unless he or she first obtains a license from the Division of Labor.

(b)(1)(A) Any person who shall engage in the business of or act as an employment agent, agency manager, or counselor without first procuring a license is guilty of a misdemeanor.

(B) He or she shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred fifty dollars (\$250) for each day of acting as an employment agent, agency manager, or counselor without a license or by imprisonment for not more than three (3) months, or by both.

(2) In addition to the penalties described in subdivision (b)(1) of this section, upon petition of the Director of the Division of Labor, any court in the state having the statutory power to enjoin or restrain shall have jurisdiction to restrain and enjoin any person who engages in the business of or acts as an employment agent, agency manager, or counselor without having first procured a license for so engaging or acting.

History. Acts 1975, No. 493, § 4; 1977, No. 390, § 2; A.S.A. 1947, § 81-1016; Acts 2019, No. 910, § 5371.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a).

11-11-209. Certificate of exemption required for certain organizations.

(a) Bona fide nursing schools, nurses' registries, management consulting firms, business schools, vocational schools whose primary function and purpose is training and education, and resume services shall obtain from the Director of the Division of Labor a certificate of exemption from the requirements of this subchapter.

(b) In connection with issuance of a certificate of exemption and with respect to an organization's continued eligibility for a previously issued certificate of exemption, the director shall have those investigative powers conferred by § 11-11-204.

History. Acts 1975, No. 493, § 2; 1977, No. 390, § 1; A.S.A. 1947, § 81-1014; Acts 2019, No. 910, § 5372.

substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (a).

Amendments. The 2019 amendment

11-11-210. Employment counselor's license — Application — Qualifications.

(a) To be eligible for application for an employment counselor's license, the applicant shall be:

- (1) A citizen of the United States;
- (2) Of good moral character;

(3) A person whose license has not been revoked within two (2) years from the date of application; and

(4) Able to demonstrate business integrity.

(b)(1) Every applicant for an initial license for employment counselor shall file with the Division of Labor a written application on a form prescribed and furnished by the Director of the Division of Labor.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(3) This application shall contain information prescribed by the director.

History. Acts 1975, No. 493, § 5; A.S.A. 1947, § 81-1017; Acts 2019, No. 910, § 5373.

substituted "Division of Labor" for "Department of Labor" and "Director of the Division of Labor" for "Director of the Department of Labor" in (b)(1).

Amendments. The 2019 amendment

11-11-211. Agency manager license — Application — Qualifications.

(a) To be eligible to apply for a license to act as an agency manager, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) At least twenty-one (21) years of age;

(4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Division of Labor may establish proof necessary to him or her that the applicant is possessed of a twelfth-grade education in terms of intellectual competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial license for agency manager shall file with the Division of Labor a written application on a form prescribed and furnished by the director.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(3) This application shall contain information prescribed by the director.

History. Acts 1975, No. 493, § 5; A.S.A. 1947, § 81-1017; Acts 2019, No. 910, §§ 5374, 5375.

Labor" for "Director of the Department of Labor" in (a)(5); and substituted "Division of Labor" for "Department of Labor" in (b)(1).

Amendments. The 2019 amendment substituted "Director of the Division of

11-11-212. Employment agency license — Application — Qualifications.

(a) To be eligible to apply for a license to operate an employment agency, the applicant shall be:

- (1) A citizen of the United States;
- (2) Of good moral character;
- (3) At least twenty-one (21) years of age;
- (4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Division of Labor may establish proof necessary to him or her that the applicant is possessed of a twelfth-grade education in terms of intellectual competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial employment agency license and every applicant for a renewal license shall file with the Director of the Division of Labor a completed application on a form prescribed and furnished by the Director of the Division of Labor.

(2)(A) The application shall be signed by the applicant and sworn to before anyone qualified by law to administer oaths.

(B) If the applicant is a corporation, the application shall state the names and home addresses of all shareholders, officers, and directors of the corporation and shall be signed and sworn to by the president, treasurer, and secretary thereof.

(C) If the applicant is a partnership, the application shall state the names and home addresses of all partners therein and shall be signed and sworn to by all of them.

(3) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(4) This application shall also contain such other information as the Director of the Division of Labor may prescribe.

History. Acts 1975, No. 493, § 5; A.S.A. substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (a)(5).
1947, § 81-1017; Acts 2019, No. 910, § 5376.

Amendments. The 2019 amendment

11-11-213. Employment agency license — Bond required — Action on the bond.

(a)(1) Every application for issuance or renewal of an employment agency's license shall be accompanied by a bond in the sum of five thousand dollars (\$5,000) with a duly licensed surety company or companies authorized to do business in this state.

(2) The terms and conditions of the bond shall be approved by the Director of the Division of Labor.

(3) The bond shall be conditioned that the employment agency and each member, employee, shareholder, director, or officer of a person, firm, partnership, corporation, or association operating as the employment agency will not violate the provisions of this subchapter or violate rules or orders lawfully promulgated by the director or violate the terms of any contract made by the employment agent in the conduct of its business.

(b)(1) If any person shall be aggrieved by the misconduct of any licensee, that person may maintain an action in his or her own name upon the bond of the employment agency in any court of competent jurisdiction or in the Pulaski County Circuit Court.

(2)(A) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the licensee as the person aggrieved would have been entitled to if the claim had not been assigned.

(B) Any claim so assigned may be enforced in the name of the assignee.

(3) Any remedies given by this section shall not be exclusive of any other remedy that would otherwise exist.

(c) Action on the bond required by this section may be maintained by the director in the name of the state in any court of competent jurisdiction or in the Pulaski County Circuit Court, for the benefit of any person or persons aggrieved by the misconduct of the licensee.

(d)(1) If any licensee fails to file a new bond with the Division of Labor within thirty (30) days after notice of cancellation by the surety of the bond required by this section, the license issued to the principal under the bond is suspended until such time as a new surety bond is filed with and approved by the director.

(2) A person whose license is suspended pursuant to this subsection shall not carry on the business of an employment agency during the period of the suspension.

History. Acts 1975, No. 493, § 6; A.S.A. 1947, § 81-1018; Acts 2019, No. 315, § 838; 2019, No. 910, §§ 5377, 5378.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (a)(3).

The 2019 amendment by No. 910 substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (a)(2); and substituted "Division of Labor" for "Department of Labor" in (d)(1).

11-11-214. Investigation of license applicant by director.

(a) Upon filing of an application for a license as provided in this subchapter, the Director of the Division of Labor shall cause an investigation to be made regarding the character, business integrity, and financial responsibility of the license applicant.

(b) The director shall also determine the suitability or unsuitability of the applicant's proposed office location.

(c) An application for an employment agency's, agency manager's, or employment counselor's license shall be rejected by the director if it is found that any person named in the license application is not of good moral character, business integrity, or financial responsibility or if there is good and sufficient reason within the meaning and purpose of this subchapter for rejecting the application.

History. Acts 1975, No. 493, § 5; A.S.A. substituted “Director of the Division of Labor” for “Director of the Department of Labor” in (a).
1947, § 81-1017; Acts 2019, No. 910, § 5379.

Amendments. The 2019 amendment

11-11-215. Employment agency license — Scope — Change of license.

(a)(1) An employment agent’s license issued pursuant to this subchapter shall protect only those persons to whom it is issued and only the location for which it is issued.

(2) A separate license shall be required for each separate office location operated by an employment agency.

(3) No license shall be valid to protect any business transacted under any name other than that designated in the license.

(b) No employment agent shall permit any person not mentioned in the license or license application to become a member, officer, director, shareholder, or partner in the conduct of the business of the employment agent unless written consent of the Director of the Division of Labor and written consent of the surety on the bond required by this subchapter shall first be obtained.

(c) The location of an employment agency shall not be changed without written consent from the Director of the Division of Labor, and a new license application shall be required for any change of office location in excess of twenty-five (25) miles.

(d) A charge of ten dollars (\$10.00) shall be made by the Division of Labor for the recording of authorization for each change of office location authorized by this section.

History. Acts 1975, No. 493, § 7; A.S.A. substituted “Director of the Division of Labor” for “Director of the Department of Labor” in (b); and substituted “Division of Labor” for “Department of Labor” in (d).
1947, § 81-1019; Acts 2019, No. 910, §§ 5380, 5381.

Amendments. The 2019 amendment

11-11-216. Examination for licenses.

(a)(1)(A) Before the Director of the Division of Labor issues a license to an applicant for a permanent employment agent’s, permanent agency manager’s, or permanent counselor’s license, the applicant shall be required to successfully complete a written examination prepared by the director.

(B) The examination shall establish the competency of the applicant to:

(i) Operate and conduct an employment agency; or

(ii) Perform service as an agency manager or counselor for the agency.

(2) No examination shall be required for renewal of any license issued pursuant to this subchapter unless the license has been suspended, revoked, or submitted late, causing the application to be treated as a new application.

(b) The Division of Labor shall hold examinations at such times and places as it shall reasonably determine, except that examinations shall be given to license applicants at least once every sixty (60) days.

(c)(1) An examination fee of five dollars (\$5.00) shall be paid by each applicant in addition to the license fee.

(2) The examination fee shall be retained by the division, whether or not the applicant successfully completes the examination.

(3) The examination fee shall be forfeited if the applicant does not take the examination within three (3) months of the application date.

History. Acts 1975, No. 493, § 10; A.S.A. 1947, § 81-1022; Acts 2007, No. 827, § 128; 2019, No. 910, §§ 5382-5384.

Amendments. The 2019 amendment substituted "Director of the Division of

Labor" for "Director of the Department of Labor" in (a)(1)(A); substituted "Division of Labor" for "Department of Labor" in (b); and substituted "division" for "department" in (c)(2).

11-11-218. Temporary licenses.

(a)(1) The Director of the Division of Labor shall have authority to issue a temporary license for operation of a private employment agency, which shall be valid for no more than ninety (90) days, upon submission by the applicant for the license of:

(A) A properly completed application form furnished and approved by the director;

(B) Submission of evidence of the applicant's compliance with the bonding requirements of this subchapter; and

(C) Payment of a temporary license fee of one hundred dollars (\$100).

(2) The temporary license may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent private employment agency license.

(b)(1) The director shall have authority to issue temporary licenses for agency managers and employment counselors, which shall be valid for no more than ninety (90) days, upon submission by the applicant for such license of:

(A) A properly completed application form, furnished and approved by the director; and

(B) Payment of a temporary license fee of ten dollars (\$10.00).

(2) The temporary licenses for agency managers and employment counselors may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent license as agency manager or employment counselor.

(3) Temporary licenses issued to agency managers and employment counselors are nontransferable and are automatically rescinded upon suspension or termination of the employment of the agency manager or employment counselor.

(4) The director shall approve or reject an application for a temporary agency manager's license or temporary employment counselor's license within five (5) days after receipt of a properly completed application for the license.

History. Acts 1975, No. 493, § 5; A.S.A. substituted “Director of the Division of Labor” for “Director of the Department of Labor” in the introductory language of § 5385.

Amendments. The 2019 amendment (a)(1).

11-11-219. Renewal of licenses.

(a) Every license issued pursuant to this subchapter shall remain in force for one (1) year from the date of issue or until the end of the state’s fiscal year, whichever occurs first, unless the license has been revoked pursuant to the provisions of this subchapter.

(b) Applications for renewal of all licenses provided by this subchapter must be filed with the Director of the Division of Labor no later than thirty (30) days prior to expiration of the license.

(c) Any licensee who fails to renew a license by the expiration date shall be automatically suspended from the right to engage in the activity authorized by the license until the license is renewed.

(d) Every application for renewal of a license must be accompanied by payment of the required license fee and evidence of compliance with the bonding requirements of this subchapter.

History. Acts 1975, No. 493, § 8; A.S.A. substituted “Director of the Division of Labor” for “Director of the Department of Labor” in (b).

Amendments. The 2019 amendment

11-11-220. Cessation of business by licensee.

(a)(1) If an employment agent ceases business operations, the agent shall, as soon as reasonably possible, notify the Division of Labor and shall deliver or forward by mail the agent’s license to the division. Failure to give notice, or failure to deliver such employment agent’s license, shall be a violation of § 11-11-208.

(2)(A) When one (1) or more individuals, on the basis of whose qualifications an agency license has been obtained, ceases to be connected with the licensed business for any reason whatsoever, the agency business may be carried on for a temporary period not to exceed thirty (30) days, under such terms and conditions as the Director of the Division of Labor shall provide by rule for the orderly closing of the business or the replacement and qualification of a new member, partner, or corporate officer, director, or shareholder.

(B) The agency’s authorization to continue to do business under this subchapter beyond the thirty-day period provided in this subdivision (a)(2) shall be contingent upon approval by the Director of the Division of Labor of any new member, principal, partner, officer, director, or shareholder.

(b)(1) If an agency manager terminates his or her employment with an employment agency by which he or she is employed, the agency shall notify the division, as soon as is reasonably possible, to enable the division to know at all times the identity of the person charged with the general management of each of the agency’s office locations.

(2) The employment agency shall also deliver or forward by mail the agency manager's license, together with the reasons why the agency manager has terminated his or her position with the employment agency.

(c) If an employment counselor terminates his or her employment with the employment agency by which he or she is employed, the agency shall, as soon as is reasonably possible, notify the division and deliver or forward by mail the employment counselor's license to the division, together with the reasons for his or her termination.

History. Acts 1975, No. 493, §§ 5, 8; A.S.A. 1947, §§ 81-1017, 81-1020; Acts 2019, No. 315, § 839; 2019, No. 910, § 5387.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(2)(A).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Depart-

ment of Labor" in (a)(1); substituted "division" for "department" throughout the section; and substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (a)(2)(A) and for "director" in (a)(2)(B).

11-11-221. Issuance, refusal, suspension, or revocation of license — Grounds.

(a) The Director of the Division of Labor shall issue a license as an employment agent, agency manager, or counselor to any person who qualifies for the license under the terms of this subchapter.

(b) The director may, in addition, refuse to issue a license to any person or may suspend or revoke the license of any employment agent, agency manager, or employment counselor or impose administrative fines as provided for in § 11-11-203 when the director finds that any of the following conditions exist:

(1) That the employment agent, agency manager, or counselor has violated any of the provisions of this subchapter;

(2) That the employment agent, agency manager, or counselor has violated any of the rules or other orders lawfully promulgated by the director;

(3) That the employment agent, agency manager, or counselor has violated the conditions of the bond required by § 11-11-213;

(4) That the person, employment agent, agency manager, or employment counselor has engaged in a fraudulent, deceptive, or dishonest practice;

(5) That the person, employment agent, agency manager, or employment counselor has been legally adjudicated incompetent; or

(6) That the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or employment counselor within the meaning of this subchapter or of any of the rules or orders lawfully promulgated by the director.

(c) This section and § 11-11-222 shall not be construed to relieve any person from civil liability or from criminal prosecution under the provisions of this subchapter or under other laws of this state.

History. Acts 1975, No. 493, § 13; A.S.A. 1947, § 81-1025; Acts 2019, No. 315, §§ 840, 841; 2019, No. 910, § 5388.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(2) and (b)(6).

The 2019 amendment by No. 910 substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (a).

11-11-222. Refusal, suspension, or revocation of license — Notice and hearing.

(a)(1) The Director of the Division of Labor may not refuse to issue a license or suspend or revoke a license unless it furnishes the person, employment agent, agency manager, or employment counselor with a written statement of the charges against him or her and affords him or her an opportunity to be heard on the charges.

(2) At the time that written charges are furnished to an employment agency, the director shall make available to the agency a signed written statement by any individual having filed a complaint with the director relative to the matter for which charges have been filed by the director.

(3) The agency shall be given at least twenty (20) days' written notice of the date and time of the hearing. The notice shall conform to the standards for notices set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) The notice shall be sent by certified mail, return receipt requested, to the address of the person as shown on his or her application for license, or it may be served in the manner in which a summons is served in civil cases commenced in the circuit courts of this state.

(b)(1) At the time and place fixed for the hearing, the director shall hold the hearing and thereafter make his or her order either dismissing the charges or refusing, suspending, or revoking the license.

(2)(A) At the hearing, the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him or her.

(B)(i) He or she shall be allowed to produce evidence and witnesses in his or her defense and shall have the right to have witnesses subpoenaed.

(ii) The subpoenas shall be issued by the director.

(c)(1) A stenographic record of all proceedings shall be made, and a transcript of the proceedings shall be made if desired by the Division of Labor or by the accused.

(2) The transcript shall be paid for by the party ordering it.

History. Acts 1975, No. 493, § 13; A.S.A. 1947, § 81-1025; Acts 2019, No. 910, §§ 5389, 5390.

Amendments. The 2019 amendment substituted "Director of the Division of

Labor" for "Director of the Department of Labor" in (a)(1); and substituted "Division of Labor" for "Department of Labor" in (c)(1).

11-11-223. Judicial review of director's administrative orders.

(a) If the Director of the Division of Labor refuses to grant a license, suspends or revokes a license that has been granted, or imposes an administrative fine as provided in §§ 11-11-213, 11-11-221, and 11-11-222, the person adversely affected or aggrieved by the order of the director issued pursuant to the provisions of §§ 11-11-221 and 11-11-222 may obtain a review of the order.

(b) The order may be brought in the circuit court in the judicial district in which the violation is alleged to have occurred, where the employment agent, manager, or counselor worked, or in the Pulaski County Circuit Court or, if the aggrieved person is a nonresident of the state, in the Pulaski County Circuit Court.

(c)(1) The review may be obtained by filing in the court within thirty (30) days following the issuance of the order a written petition praying that the order be modified or set aside.

(2)(A) A copy of the petition shall be forthwith transmitted by the clerk of the court to the Division of Labor.

(B) Thereupon, the division shall file in the court the record of proceedings before the division.

(d) Upon the filing, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside, in whole or in part, the order of the director and enforcing the same to the extent that the order is affirmed.

(e) Commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the order of the director.

(f)(1) No objection which has not been urged before the director shall be considered by the court.

(2) The findings of the director with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(g)(1) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and made a part of the record.

(2)(A) The director may modify his or her findings as to the facts or make new findings, by reason of additional evidence so taken and filed, and the director shall file the modified or new findings with the court.

(B) The findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(h) Upon the filing of the record with it, the jurisdiction of the court shall be exclusive, and its judgment and decree shall be final, except that it shall be subject to review by the Supreme Court.

(i)(1) The division shall certify the record of its proceedings if the party commencing the proceedings shall pay to it the cost of preparing and certifying the records, including the recording and transcribing of all testimony introduced in the proceedings.

(2) If payment of the costs of preparing and certifying the records, including the recording and transcribing of all testimony introduced in the proceedings, is not made by the party commencing the proceedings for review within ten (10) days after notice from the division of the cost of preparing and certifying the record, the circuit court in which the proceeding is pending, on motion of the director, shall dismiss the petition.

History. Acts 1975, No. 493, § 14; Labor” in (a); substituted “Division of Labor” for “Department of Labor” in A.S.A. 1947, § 81-1026; Acts 2019, No. (c)(2)(A); and substituted “division” for 910, §§ 5391-5393. “department” in (c)(2)(B) twice and in

Amendments. The 2019 amendment substituted “Director of the Division of Labor” for “Director of the Department of (i)(1).

11-11-225. Miscellaneous restrictions and requirements.

In addition to other provisions of this subchapter, the following provisions shall govern each and every employment agency:

(1) Every employment agent or agency shall display his, her, or its license in a conspicuous place in the main office of the agency. Managers and counselors shall display their licenses in a conspicuous place in their offices or work areas;

(2)(A) All advertising by an employment agency of any form or kind shall include the words “employment agency” or “personnel agency”.

(B) Advertising for an employment position with the agency itself shall clearly convey the information that the job position offered is with the employment agency publishing the advertisement;

(3) No employment agency or its agents or employees shall receive or require any applicant to execute any power of attorney, assignment of wages or salary, or note authorizing the confession of judgment;

(4) No employment agent, by himself or herself, or by his or her agents or employees, shall solicit, persuade, or induce any employee to leave any employment in which the employment agent or his or her agent has placed the employee, nor shall any employment agency or any of its agents or employees solicit, persuade, or induce any employer to discharge any employee, nor shall any employment agent, or his or her agents or employees, divide or offer to divide or share directly or indirectly any fee, charge, or compensation received, or to be received, from an employee with any employer or persons in any way connected with the business thereof;

(5)(A) No employment agent by himself or herself or by his or her agents or employees shall give or promise to give anything of intrinsic

value to any employer or applicant for employment as an inducement to use the services of his or her employment agency.

(B) No fee shall be solicited or accepted as an application or registration fee by an employment agent for the purpose of registering any person as an applicant for employment;

(6) No employment agency or its agents or employees shall advertise or make a referral for any job position without having first obtained a bona fide job order therefor;

(7) No employment agency or its agents or employees shall refer an applicant for a job or job interview unless the applicant has been personally interviewed by the employment agency or its agents or employees or has corresponded with the employment agency with the specific purpose of securing employment through that employment agency;

(8)(A) Every employment agency shall inform the public by a conspicuous sign or poster that the employment agency is subject to the requirements of this subchapter, which is administered and enforced by the Division of Labor.

(B) The division shall prepare and distribute the sign or poster to be used by agencies to comply with this subdivision (8);

(9) No employment agency or its agents or employees shall knowingly send an applicant to any place where a strike, lockout, or other labor dispute exists;

(10) No agency shall use any trade name or business identity similar to, or reasonably likely to be confused with, the trade name or business identity of an existing agency or any governmental nonprofit employment agency;

(11) No employment agency shall refer an applicant to a situation, employment, or occupation prohibited by law;

(12) No employment agency shall charge a fee to an employee for any services other than actual placement of an applicant;

(13) No employment agency shall charge an applicant a fee for accepting employment with the employment agency or any subsidiary of that agency;

(14) Any information regarding an applicant's background or credit, from whatever source obtained, shall be used for no purpose other than assisting the applicant in securing employment. However, an employment agency may use background and credit information regarding an applicant in determining whether to conduct placement services for the applicant if the applicant gives written authorization for securing the information and understands the purpose for which the information is secured;

(15) No employment agency or its agents or employees shall engage in any practice that discriminates against any person on the basis of race, color, sex, age, religion, or national origin;

(16) Under no circumstances shall more than one (1) fee for any one (1) placement be charged any applicant;

(17) No contracts, forms, or schedules used by employment agencies shall contain any provisions in conflict with the provisions of this subchapter; and

(18) All refunds due shall be made by the agency by cash, check, or money order promptly when due.

History. Acts 1975, No. 493, § 16; substituted "Division of Labor" for "Department of Labor" in (8)(A); and substituted "division" for "department" in (8)(B).
A.S.A. 1947, § 81-1028; Acts 1995, No. 283, § 1; 2019, No. 910, § 5394.

Amendments. The 2019 amendment

11-11-227. Fee restrictions and requirements.

(a) When employment lasts less than ninety (90) calendar days, regardless of the reason, no employment agency may charge an employee a fee of more than one-ninetieth ($\frac{1}{90}^{\text{th}}$) of the permanent placement fee for each calendar day of the employment. Under no circumstances shall the fee exceed twenty percent (20%) of an employee's actual gross earnings if employment lasts less than thirty (30) days or forty percent (40%) of an employee's actual gross earnings if employment lasts more than thirty (30) days but less than ninety (90) days.

(b)(1) When a promissory note is used by the agency, it shall be clearly identified as such and shall not be executed until the placement is made.

(2) The defense of no or insufficient consideration shall be good as against a holder of any such employment agency fee note.

(c)(1) When a dispute concerning a fee exists, the Division of Labor may conduct an investigation to determine all of the facts concerning the dispute. Thereafter, the Director of the Division of Labor shall issue a decision and order resolving the dispute.

(2) Any person aggrieved by this decision and order may obtain review of this decision and order pursuant to § 11-11-222.

(d)(1) Any schedule of fees to be charged by an employment agency for its services shall be furnished to all applicants upon making application with the agency.

(2)(A) The forms, fee schedules, and contracts utilized by an employment agency shall contain no ambiguous, false, or misleading information.

(B) No contract or fee schedule shall contain smaller than eight-point type.

(e)(1) All fee schedules used in the business of an employment agency must be furnished to job applicants and fee-paying employers and shall state in dollars and cents the amount of any fee charged by the agency for its services.

(2) Percentages shall not be used by agencies in schedules of fees to be charged for their services, except when the annual salary for a job is twelve thousand dollars (\$12,000) or more.

(f) It shall be unlawful for any employment agency to impose, enforce, collect, or receive a fee for performance of any service for a job

applicant, or for a prospective employer, unless the agency makes every reasonable effort to disclose the exact dollar amount of the fee to the applicant or prospective employer prior to commencement of employment of an applicant by an employer.

(g) Nothing in this section or this subchapter shall be construed to prohibit an employment agency from contracting with an employer on a fee-paid basis to pay the fee for the placement services for an employee without an actual job placement or to prohibit an agency from charging a fee to an employer for a retained services contract to search for applicants for an employer without an actual job placement.

History. Acts 1975, No. 493, § 12; A.S.A. 1947, § 81-1024; Acts 1995, No. 283, § 2; 2019, No. 910, § 5395.

substituted "Division of Labor" for "Department of Labor" and "Director of the Division of Labor" for "Director of the Department of Labor" in (c)(1).

Amendments. The 2019 amendment

11-11-228. Filing of fee schedule, forms, and contracts required.

(a) It shall be the duty of every employment agency to file with the Division of Labor a schedule of all fees, charges, and commissions that the agency expects to charge and collect for its service, together with a copy of all forms and contracts to be used in dealings with the public in the operation of its business.

(b) The fee schedules, contracts, and forms shall be filed with the division on the date of the agency's application for initial or renewal licensing under this subchapter.

(c) Any amendments or supplements to fee schedules, contracts, or forms filed with the division must be filed at least fifteen (15) days before the amendment or supplement is to become effective.

(d) It shall be unlawful for any employment agency to charge, demand, collect, or receive a greater compensation for any service performed by the agency than is specified in fee schedules filed with the division or than is specified by this subchapter.

History. Acts 1975, No. 493, § 12; A.S.A. 1947, § 81-1024; Acts 2019, No. 910, § 5396.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a).

11-11-229. Records required.

(a) It shall be the duty of every employment agency to keep a complete record of all orders for employees that are received from prospective employers. This record shall contain the date when the order was received, the name and address of the employer seeking the services of an employee, the name of the individual placing the order, the duties of the position to be filled, the qualifications required of the employee, the salary or wages to be paid, and the probable duration of the job.

(b) It shall be the duty of every employment agency to keep a complete record of each applicant who is referred by the agency to an employer for a job interview. This record shall contain the date when

the applicant was referred to a prospective employer for a job or interview, the name of the applicant, and the name of the firm to whom the applicant is referred.

(c)(1) It shall be the duty of every employment agency to keep a complete register called a “business transaction record”, which shall consist of the name of the individual placed, the date of the placement, the name of the employer, the starting date of the position, the starting salary, the amount of the fee charged, and the remarks column.

(2) The remarks column will state the amount of any adjustment or refund made.

(d)(1) Prior to referral of any person to a job or interview or prior to placement of any job advertisement, an employment agency must have a current bona fide job order.

(2) It shall be the duty of every employment agency to maintain a copy of any job advertisement and the job order pertaining to any advertisement in a readily available record.

(e) All of the records listed in this section shall be kept in the employment agency office and shall be open during office hours to inspection by the Division of Labor and its duly authorized agents.

(f) No employment agent or his or her employee shall knowingly make any false entry or omission in the records.

History. Acts 1975, No. 493, § 11; A.S.A. 1947, § 81-1023; Acts 2019, No. 910, § 5397.

Amendments. The 2019 amendment substituted “Division of Labor” for “Department of Labor” in (e).

CHAPTER 12

EMPLOYMENT OF CHILDREN IN ENTERTAINMENT INDUSTRY

SECTION.

- 11-12-102. Definitions.
- 11-12-103. Penalty.
- 11-12-104. Restrictions on employment.

SECTION.

- 11-12-105. Implementation and enforcement.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

11-12-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) [Repealed.]
- (2) "Employ" means to use the services of an individual in any remunerative occupation; and
- (3) "Entertainment industry" means any individual, partnership, corporation, association, or group of persons using the services of a child under sixteen (16) years of age in motion picture productions, television or radio productions, theatrical productions, modeling productions, horse shows, rodeos, and musical performances.

History. Acts 1987, No. 647, § 2; 2019, No. 910, § 5398.

Amendments. The 2019 amendment repealed the defined term "director".

11-12-103. Penalty.

(a) Any person, firm, corporation, or association who violates a provision of this chapter or a lawful rule promulgated under this chapter shall be liable for a civil penalty in accordance with the provisions of § 11-6-103.

(b)(1) Any person who willfully or intentionally violates the provisions of this chapter or a lawful rule promulgated under this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for not more than thirty (30) days, or by both a fine and imprisonment.

(2) Each day that the violation continues shall be deemed a separate offense.

History. Acts 1987, No. 647, § 5; 1991, No. 509, § 2; 2019, No. 315, § 842.

substituted "rule" for "regulation" in (a) and (b)(1).

Amendments. The 2019 amendment

11-12-104. Restrictions on employment.

(a) A child under sixteen (16) years of age may be employed in the entertainment industry, and the provisions of §§ 11-6-101 — 11-6-111, with respect to child labor, shall not be applicable to the employment of child actors as authorized in this chapter.

(b) No child under sixteen (16) years of age may be employed in the entertainment industry:

(1) In a role or in an environment deemed to be hazardous or detrimental to the health, morals, education, or welfare of the child as determined by the Director of the Division of Labor;

(2) When the child is required to use a dressing room that is simultaneously occupied by an adult or by other children of the opposite sex;

(3) When the child is not provided with a suitable place to rest or play;

- (4) When the parent or guardian of the child is prevented from being present at the scene of employment during all the times the child is working;
- (5) When the parent or guardian of the child is prevented from being within sight and sound of the child; and
- (6) Without a permit issued by the director and the written consent of the child's parent or guardian for the issuance of the permit.

History. Acts 1987, No. 647, § 3; 2019, No. 910, § 5399. substituted "Director of the Division of Labor" for "Director of the Department of Labor" in (b)(1).

Amendments. The 2019 amendment

11-12-105. Implementation and enforcement.

The Director of the Division of Labor shall have the authority to:

- (1) Promulgate rules for the implementation of this chapter;
- (2) Suspend or revoke a permit for the employment of a child in the entertainment industry for cause;
- (3) Enter or authorize his or her representative to enter and inspect any place of employment where children work, rest, or play; and
- (4) Otherwise enforce and implement the provisions of this chapter.

History. Acts 1987, No. 647, § 4; 2019, No. 315, § 843; 2019, No. 910, § 5400. The 2019 amendment by No. 910 substituted "Director of the Division of Labor" for "Director of the Department of Labor" in the introductory language.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (1).

CHAPTER 13
ARKANSAS CONSERVATION CORPS ACT
[Repealed.]

SECTION.
11-13-101 — 11-13-113. [Repealed.]

11-13-101 — 11-13-113. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2013, No. 1151, § 3. The chapter was derived from the following sources:

11-13-101. Acts 1993, No. 1232, § 1.	11-13-104. Acts 1993, No. 1232, § 4.
11-13-102. Acts 1993, No. 1232, § 2;	11-13-105. Acts 1993, No. 1232, § 5.
1997, No. 540, § 15; 1999, No. 646, § 3;	11-13-106. Acts 1993, No. 1232, § 7.
1999, No. 1164, § 119.	11-13-107. Acts 1993, No. 1232, § 8.
11-13-103. Acts 1993, No. 1232, §§ 3,	11-13-108. Acts 1993, No. 1232, § 9.
15.	11-13-109. Acts 1993, No. 1232, § 10.
	11-13-110. Acts 1993, No. 1232, §§ 6, 11.
	11-13-111. Acts 1993, No. 1232, § 13.
	11-13-112. Acts 1993, No. 1232, § 14.
	11-13-113. Acts 1993, No. 1232, § 12.

CHAPTER 14

VOLUNTARY PROGRAM FOR DRUG-FREE WORKPLACES

SECTION.

11-14-101. Legislative intent.

11-14-106. Required drug or alcohol tests.

11-14-112. Rating plans based on drug-free workplace program participation.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

11-14-101. Legislative intent.

(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b)(1) If an employer implements a drug-free workplace program under this chapter that includes notice, education, and procedural requirements for testing for drugs and alcohol under rules developed by the Workers' Health and Safety Division, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol, and if a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted under this chapter as excessive, the employee may be terminated and may be precluded from workers' compensation medical and indemnity benefits.

(2) However, a drug-free workplace program shall require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with

the presence of drugs or alcohol in the employee's body, and if an injured employee refuses to submit to a test for drugs or alcohol, the employee may be precluded from workers' compensation medical and indemnity benefits.

History. Acts 1999, No. 1552, § 1; 2001, No. 1757, § 9; 2017, No. 154, § 1.

Amendments. The 2017 amendment redesignated former (b) as (b)(1) and (b)(2); in (b)(1), substituted "program under this chapter" for "program in accordance with this chapter", substituted "al-

cohol under rules" for "alcohol pursuant to rules", and substituted "adopted under this chapter" for "adopted pursuant to this chapter"; and, in (b)(2), substituted "shall require" for "must require" and deleted the former last sentence.

11-14-106. Required drug or alcohol tests.

(a) To the extent permitted by law, a covered employer who voluntarily establishes a drug-free workplace is required to conduct the following types of drug or alcohol tests:

(1) **JOB APPLICANT DRUG AND ALCOHOL TESTING.** A covered employer must require job applicants to submit to a drug test after a conditional offer of employment and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may test job applicants for alcohol, but is not required to, after a conditional offer of employment. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with a Workers' Health and Safety Division rule;

(2) **REASONABLE-SUSPICION DRUG AND ALCOHOL TESTING.** A covered employer must require an employee to submit to reasonable-suspicion drug or alcohol testing. A written record shall be made of the observations leading to a controlled-substances reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to § 11-14-109 and shall be retained by the covered employer for at least one (1) year;

(3) **ROUTINE FITNESS-FOR-DUTY DRUG TESTING.**

(A) A covered employer shall require an employee to undergo drug or alcohol testing, if as a part of the employer's written policy, the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group. Provided, a public employer may require scheduled, periodic testing only of employees who:

- (i) Are police or peace officers;
- (ii) Have drug interdiction responsibilities;
- (iii) Are authorized to carry firearms;
- (iv) Are engaged in activities that directly affect the safety of others;

(v) Work in direct contact with inmates in the custody of the Division of Correction; or

(vi) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the Department of Human Services.

(B) This subdivision (a)(3) does not require a drug or alcohol test if a covered employer's personnel policy on July 1, 2000, does not include drug or alcohol testing as part of a routine fitness-for-duty medical examination. The test shall be conducted in a nondiscriminatory manner. Routine fitness-for-duty drug or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function;

(4) **FOLLOW-UP DRUG TESTING.** If the employee in the course of employment enters an employee assistance program for drug-related or alcohol-related problems or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to the program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least one (1) time per year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested; and

(5) **POST-ACCIDENT TESTING.** After an accident that results in an injury, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with the provisions of this chapter.

(b) This chapter does not preclude an employer from conducting any lawful testing of employees for drugs or alcohol that is in addition to the minimum testing required under this chapter.

History. Acts 1999, No. 1552, § 6; substituted "Division of Correction" for 2019, No. 910, § 698. "Department of Correction" in (a)(3)(A)(v).

Amendments. The 2019 amendment

11-14-112. Rating plans based on drug-free workplace program participation.

The Insurance Commissioner shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the Workers' Health and Safety Division. The plans must take effect January 1, 2000, must be actuarially sound, and must state the savings anticipated to result from the drug testing. The credit shall be at least five percent (5%) unless the Insurance Commissioner determines that five percent (5%) is actuarially unsound. The Insurance Commissioner is also authorized to develop a schedule of premium credits for workers' compensation

insurance for employers who have safety programs that attain certain criteria for safety programs. The Insurance Commissioner shall consult with the Director of the Division of Labor in setting such criteria.

History. Acts 1999, No. 1552, § 12; substituted “Director of the Division of Labor” for “Director of the Department of Labor” in the last sentence.

Amendments. The 2019 amendment

CHAPTER 15

VOLUNTARY VETERANS' PREFERENCE
EMPLOYMENT POLICY

SECTION.	SECTION.
11-15-101. Title.	cal government employ-
11-15-102. Definitions.	ment.
11-15-103. Voluntary veterans' prefer-	11-15-104. Registry — Participating em-
ence employment policy —	ployers.
Private employment — Lo-	11-15-105. Verification of eligibility.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

RESEARCH REFERENCES

Ark. L. Rev. Michael D. Sutton, Comment: Forging a New Breed: The Emergence of Veterans’ Preference Statutes

Within the Private Sector, 67 Ark. L. Rev. 1081 (2014).

11-15-101. Title.

This chapter shall be known and may be cited as the “Voluntary Veterans’ Preference Employment Policy Act”.

History. Acts 2013, No. 598, § 1.

11-15-102. Definitions.

As used in this section:

(1) “DD 214” means a United States Department of Defense Report of Separation form or its predecessor or successor forms;

(2)(A) "Local government employer" means a municipality, a county, or township of the state that has issued a resolution to implement a veterans' preference employment policy under § 11-15-103.

(B) "Local government employer" does not include the state or a public institution of higher education;

(3)(A) "Private employer" means a sole proprietor, corporation, partnership, limited liability company, or other entity with one (1) or more employees.

(B) "Private employer" does not include the state or a public institution of higher education;

(4) "Spouse of a disabled veteran" means:

(A) The spouse of a veteran who has been classified by the United States Department of Veterans Affairs' Veterans Benefits Administration as having a permanent total disability rating; and

(B) A United States citizen;

(5) "Surviving spouse" means a spouse of a deceased veteran who is:

(A) Unmarried at the time he or she seeks a veterans' preference under § 11-15-103; and

(B) A United States citizen;

(6) "Veteran" means a person who:

(A) Served on active duty for a period of more than one hundred eighty (180) days and was discharged or released from active duty with other than a dishonorable discharge;

(B) Was discharged or released from active duty because of a service-connected disability; or

(C) As a member of a reserve component under an order to active duty, not to include training, was discharged or released from duty with other than a dishonorable discharge; and

(7) "Veterans' preference employment policy" means a private employer or local government employer's voluntary preference for hiring, promoting, or retaining a veteran, spouse of a disabled veteran, or surviving spouse of a veteran over another equally qualified applicant or employee.

History. Acts 2013, No. 598, § 1.

11-15-103. Voluntary veterans' preference employment policy — Private employment — Local government employment.

(a)(1) A private employer or local government employer may have a voluntary veterans' preference employment policy.

(2) The veterans' preference employment policy:

(A) Shall be in writing;

(B) Shall be applied uniformly to employment decisions regarding the hiring, promotion, or retention during a reduction in force; and

(C) May be modeled after § 21-3-302(d)-(g) and § 21-3-303 et seq.

(b) A veteran, spouse of a disabled veteran, or surviving spouse of a veteran shall submit a DD 214 of the veteran to a private employer or

local government employer with a veterans' preference employment policy to be eligible for the preference.

History. Acts 2013, No. 598, § 1.

11-15-104. Registry — Participating employers.

The Division of Workforce Services shall maintain a registry of private employers and local government employers in Arkansas that have a voluntary veterans' preference employment policy.

History. Acts 2013, No. 598, § 1; 2019, substituted "Division of Workforce Services" for "Department of Workforce Services".
No. 910, § 328.

Amendments. The 2019 amendment

11-15-105. Verification of eligibility.

The Department of Veterans Affairs and the Division of Workforce Services shall assist a private employer or a local government employer in determining if an applicant or employee is a veteran, spouse of a disabled veteran, or surviving spouse of a veteran.

History. Acts 2013, No. 598, § 1; 2019, substituted "Division of Workforce Services" for "Department of Workforce Services".
No. 910, § 6328.

Amendments. The 2019 amendment

